

SENATE BILL NO. 231
INTRODUCED BY B. CROMLEY

A BILL FOR AN ACT ENTITLED: "AN ACT REPLACING THE REVISED UNIFORM PRINCIPAL AND INCOME ACT WITH THE MONTANA UNIFORM PRINCIPAL AND INCOME ACT; AND REPEALING SECTIONS 72-34-401, 72-34-402, 72-34-403, 72-34-404, 72-34-405, 72-34-406, 72-34-407, 72-34-408, 72-34-409, 72-34-410, 72-34-411, 72-34-412, AND 72-34-416, MCA."

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

NEW SECTION. **Section 1. Short title.** [Sections 1 through 33] may be cited as the "Montana Uniform Principal and Income Act".

NEW SECTION. **Section 2. Definitions.** As used in [sections 1 through 33], unless the context requires otherwise, the following definitions apply:

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

(2) "Fiduciary" means a personal representative or a trustee.

(3) "Income" means money or property that a fiduciary receives as current return from a principal asset. The term includes a portion of receipts from a sale, exchange, or liquidation of a principal asset, to the extent provided in [sections 13 through 27].

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

(5) "Income interest" means the right of an income beneficiary to receive all or part of net income, whether the trust requires it to be distributed or authorizes it to be distributed in the trustee's discretion.

(6) "Mandatory income interest" means the right of an income beneficiary to receive net income that the trust requires the fiduciary to distribute.

(7) "Net income" means the total receipts allocated to income during an accounting period minus the disbursements made from income during the accounting period, plus or minus transfers under this chapter to or from income during the accounting period.

NEW SECTION. Section 3. Allocation between principal and income -- impartial exercise of discretion. (1) In allocating receipts and disbursements to or between principal and income, and with respect to any other matter within the scope of [sections 1 through 33], a fiduciary:

(a) shall administer a trust or decedent's estate in accordance with the trust or the will, even if there is a different provision in [sections 1 through 33];

(b) may administer a trust or decedent's estate by the exercise of a discretionary power of administration given to the fiduciary by the trust or the will, even if the exercise of the power produces a result different from a result required or permitted by [sections 1 through 33] and no inference that the fiduciary has improperly exercised the discretion arises from the fact that the fiduciary has made an allocation contrary to a provision of [sections 1 through 33];

(c) shall administer a trust or decedent's estate in accordance with [sections 1 through 33] if the trust or the will does not contain a different provision or does not give the fiduciary a discretionary power of administration; and

(d) shall add a receipt or charge a disbursement to principal to the extent that the trust or the will and [sections 1 through 33] do not provide a rule for allocating the receipt or disbursement to or between principal and income.

(2) In exercising a discretionary power of administration regarding a matter within the scope of [sections 1 through 33], whether granted by a trust, a will, or [sections 1 through 33], including the trustee's power to adjust under [section 4(1)], the fiduciary shall administer the trust or decedent's estate impartially, except to the extent that the trust or the will expresses an intention that the fiduciary shall or may favor one or more of the beneficiaries. The exercise of discretion in accordance with [sections 1 through 33] is presumed to be fair and reasonable to all beneficiaries.

NEW SECTION. Section 4. Adjustments between principal and income. (1) Subject to subsection (2), a trustee may make an adjustment between principal and income to the extent the trustee considers necessary if all of the following conditions are satisfied:

(a) the trustee invests and manages trust assets under the prudent investor rule [section 3 of LC 1497];

(b) the trust describes the amount that must or may be distributed to a beneficiary by referring to the trust's income; and

(c) the trustee determines, after applying the rules in [section 3(1)] and considering any power the trustee may have under the trust to invade principal or accumulate income, that the trustee is unable to comply with

[section 3(2)].

(2) A trustee may not make an adjustment between principal and income in any of the following circumstances:

(a) when it would diminish the income interest in a trust:

(i) that requires all of the income to be paid at least annually to a spouse; and

(ii) for which, if the trustee did not have the power to make the adjustment, an estate tax or gift tax marital deduction would be allowed, in whole or in part;

(b) when it would reduce the actuarial value of the income interest in a trust to which a person transfers property with the intent to qualify for a gift tax exclusion;

(c) when it would change the amount payable to a beneficiary as a fixed annuity or a fixed fraction of the value of the trust assets;

(d) when it would be made from any amount that is permanently set aside for charitable purposes under a will or trust, unless both income and principal are set aside;

(e) when possessing or exercising the power to make an adjustment would cause an individual to be treated as the owner of all or part of the trust for income tax purposes and the individual would not be treated as the owner if the trustee did not possess the power to make an adjustment;

(f) when possessing or exercising the power to make an adjustment would cause all or part of the trust assets to be included for estate tax purposes in the estate of an individual who has the power to remove a trustee or appoint a trustee, or both, and the assets would not be included in the estate of the individual if the trustee did not possess the power to make an adjustment; or

(g) when the trustee is a beneficiary of the trust.

(3) Notwithstanding 72-33-611, if subsection (2)(e), (2)(f), or (2)(g) of this section applies to a trustee and there is more than one trustee, a cotrustee to whom the provision does not apply may make the adjustment unless the exercise of the power by the remaining trustee or trustees is not permitted by the trust.

(4) A trustee may release the entire power conferred by subsection (1) or may release only the power to adjust from income to principal or the power to adjust from principal to income in either of the following circumstances:

(a) if the trustee is uncertain about whether possessing or exercising the power will cause a result described in subsections (2)(a) through (2)(f); or

(b) if the trustee determines that possessing or exercising the power will or may deprive the trust of a tax benefit or impose a tax burden not described in subsection (2).

(5) A release under subsection (4) may be permanent or for a specified period, including a period measured by the life of an individual.

(6) A trust that limits the power of a trustee to make an adjustment between principal and income does not affect the application of this section unless it is clear from the trust that it is intended to deny the trustee the power of adjustment provided by subsection (1).

(7) In deciding whether and to what extent to exercise the power to make adjustments under this section, the trustee may consider, but is not limited to considering, any of the following:

- (a) the nature, purpose, and expected duration of the trust;
- (b) the intent of the trustor;
- (c) the identity and circumstances of the beneficiaries;
- (d) the needs for liquidity, regularity of income, and preservation and appreciation of capital;
- (e) the assets held in the trust, the extent to which the assets consist of financial assets, interests in closely held enterprises, tangible and intangible personal property, or real property, the extent to which an asset is used by a beneficiary, and whether an asset was purchased by the trustee or received from the trustor;
- (f) the net amount allocated to income under other statutes and the increase or decrease in the value of the principal assets, which the trustee may estimate as to assets for which market values are not readily available;
- (g) whether and to what extent the trust gives the trustee the power to invade principal or accumulate income or prohibits the trustee from invading principal or accumulating income and the extent to which the trustee has exercised a power from time to time to invade principal or accumulate income;
- (h) the actual and anticipated effect of economic conditions on principal and income and effects of inflation and deflation; or
- (i) the anticipated tax consequences of an adjustment.

(8) Nothing in [sections 1 through 33] or this section is intended to create or imply a duty to make an adjustment, and a trustee is not liable for not considering whether to make an adjustment or for choosing not to make an adjustment.

NEW SECTION. Section 5. Notice of proposed action -- objections by beneficiary -- liability of trustee -- proceedings. (1) A trustee may give a notice of proposed action regarding a matter governed by [sections 1 through 33] as provided in this section. For the purpose of this section, a proposed action includes a course of action and a decision not to take action.

(2) The trustee shall mail notice of the proposed action to all adult beneficiaries who are receiving or are entitled to receive income under the trust or to receive a distribution of principal if the trust were terminated at the time the notice is given.

(3) A notice of proposed action need not be given to any person who consents in writing to the proposed action. The consent may be executed at any time before or after the proposed action is taken.

(4) The notice of proposed action must state that it is given pursuant to this section and must state all of the following:

- (a) the name and mailing address of the trustee;
- (b) the name and telephone number of a person who may be contacted for additional information;
- (c) a description of the action proposed to be taken and an explanation of the reasons for the action;
- (d) the time within which objections to the proposed action can be made, which must be at least 30 days from the mailing of the notice of proposed action; and
- (e) the date on or after which the proposed action may be taken or is effective.

(5) A beneficiary may object to the proposed action by mailing a written objection to the trustee at the address stated in the notice of proposed action within the time period specified in the notice of proposed action.

(6) A trustee is not liable to a beneficiary for an action regarding a matter governed by [sections 1 through 33] if the trustee does not receive a written objection to the proposed action from the beneficiary within the applicable period and the other requirements of this section are satisfied. If no beneficiary entitled to notice objects under this section, the trustee is not liable to any current or future beneficiary with respect to the proposed action.

(7) If the trustee receives a written objection within the applicable period, either the trustee or a beneficiary may petition the court to have the proposed action taken as proposed, taken with modifications, or denied. In the proceeding, a beneficiary objecting to the proposed action has the burden of proving that the trustee's proposed action should not be taken. A beneficiary who has not objected is not estopped from opposing the proposed action in the proceeding. If the trustee decides not to implement the proposed action, the trustee shall notify the beneficiaries of the decision not to take the action and the reasons for the decision, and the trustee's decision not to implement the proposed action does not itself give rise to liability to any current or future beneficiary. A beneficiary may petition the court to have the action taken and has the burden of proving that it should be taken.

NEW SECTION. **Section 6. Proceedings relating to adjustments -- remedy.** In a proceeding with

respect to a trustee's exercise or nonexercise of the power to make an adjustment under [section 4], the sole remedy is to direct, deny, or revise an adjustment between principal and income.

NEW SECTION. Section 7. Application of [sections 1 through 33]. [Sections 1 through 33] apply to every trust or decedent's estate existing on or after [the effective date of this act], except as otherwise expressly provided in the trust or will or in [sections 1 through 33].

NEW SECTION. Section 8. Rules applicable after decedent's death or termination of income interest. After the decedent's death, in the case of a decedent's estate, or after an income interest in a trust ends, the following rules apply:

(1) If property is specifically given to a beneficiary, by will or trust, the fiduciary of the estate or of the terminating income interest shall distribute the net income and principal receipts to the beneficiary who is to receive the property, subject to the following rules:

(a) the net income and principal receipts from the specifically given property are determined by including all of the amounts the fiduciary receives or pays with respect to the property, whether the amounts accrued or became due before, on, or after the decedent's death or an income interest in a trust ends and by making a reasonable provision for amounts that the fiduciary believes the estate or terminating income interest may become obligated to pay after the property is distributed; and

(b) the fiduciary may not reduce income and principal receipts from the specifically given property on account of a payment described in [section 27] to the extent that the will or the trust requires payment from other property or to the extent that the fiduciary recovers the payment from a third person.

(2) The fiduciary shall distribute to a beneficiary who receives a pecuniary amount, whether outright or in trust, the interest or any other amount provided by the will, the trust, or 72-3-913 from the remaining net income determined under subsection (3) of this section or from principal to the extent that net income is insufficient.

(3) The fiduciary shall determine the remaining net income of the decedent's estate or terminating income interest as provided in [sections 1 through 33] and by doing the following:

(a) including in net income all income from property used to discharge liabilities;

(b) paying from income or principal, in the fiduciary's discretion, fees of attorneys, accountants, and fiduciaries, court costs and other expenses of administration, and interest on death taxes, except that the fiduciary may pay these expenses from income of property passing to a trust for which the fiduciary claims an estate tax marital or charitable deduction only to the extent that the payment of these expenses from income will not cause

the reduction or loss of the deduction;

(c) paying from principal all other disbursements made or incurred in connection with the settlement of a decedent's estate or the winding up of a terminating income interest, including debts, funeral expenses, disposition of remains, family allowances, and death taxes and related penalties that are apportioned to the estate or terminating income interest by the will, the trust, or Title 72, chapter 16, part 6.

(4) After distributions required by subsection (2), the fiduciary shall distribute the remaining net income determined under subsection (3) in the manner provided in [section 9] to all other beneficiaries.

NEW SECTION. Section 9. Beneficiary's portion of net income -- maintenance of records -- distribution date. (1) Each beneficiary described in [section 8(4)] is entitled to receive a portion of the net income equal to the beneficiary's fractional interest in undistributed principal assets, using values as of the distribution dates and without reducing the values by any unpaid principal obligations.

(2) If a fiduciary does not distribute all of the collected but undistributed net income to each beneficiary as of a distribution date, the fiduciary shall maintain appropriate records showing the interest of each beneficiary in that net income.

(3) The distribution date for purposes of this section may be the date as of which the fiduciary calculates the value of the assets if that date is reasonably near the date on which assets are actually distributed.

NEW SECTION. Section 10. Beneficiary's entitlement to net income -- assets subject to trust -- assets subject to successive income interest -- termination of income interest. (1) An income beneficiary is entitled to net income from the date on which the income interest begins. An income interest begins on the date specified in the trust or, if no date is specified, on the date an asset becomes subject to a trust or successive income interest.

(2) An asset becomes subject to a trust at the following times:

(a) in the case of an asset that is transferred to a trust during the transferor's life, on the date it is transferred to the trust;

(b) in the case of an asset that becomes subject to a trust by reason of a will, even if there is an intervening period of administration of the testator's estate, on the date of the testator's death; or

(c) in the case of an asset that is transferred to a fiduciary by a third party because of the individual's death, on the date of the individual's death.

(3) An asset becomes subject to a successive income interest on the day after the preceding income

interest ends, as determined under subsection (4), even if there is an intervening period of administration to wind up the preceding income interest.

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

NEW SECTION. Section 11. Allocation of income receipt or disbursement. (1) A trustee shall allocate an income receipt or disbursement other than one to which [section 8(1)] applies to principal if its due date occurs before a decedent dies in the case of an estate or before an income interest begins in the case of a trust or successive income interest.

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

(3) An item of income or an obligation is due on the date the payer is required to make a payment. If a payment date is not stated, there is no due date for the purposes of [sections 1 through 33]. Distributions to shareholders or other owners from an entity to which [section 13] applies are considered to be due on the date fixed by the entity for determining who is entitled to receive the distribution or, if no date is fixed, on the declaration date for the distribution. A due date is periodic for receipts or disbursements that must be paid at regular intervals under a lease or an obligation to pay interest or if an entity customarily makes distributions at regular intervals.

NEW SECTION. Section 12. Undistributed income -- definition -- payment to beneficiary. (1) (a) For the purposes of this section, "undistributed income" means net income received before the date on which an income interest ends.

(b) The term does not include an item of income or expense that is due or accrued or net income that has been added or is required to be added to principal by the trust.

(2) Except as provided in subsection (3), on the date when a mandatory income interest ends, the trustee shall pay to a mandatory income beneficiary who survives that date or to the estate of a deceased mandatory income beneficiary whose death causes the interest to end the beneficiary's share of the undistributed income that is not disposed of under the trust.

(3) If immediately before the income interest ends, the beneficiary under subsection (2) has an unqualified power to revoke more than 5% of the trust, the undistributed income from the portion of the trust that may be revoked must be added to principal.

(4) When a trustee's obligation to pay a fixed annuity or a fixed fraction of the value of the trust's assets ends, the trustee shall prorate the final payment.

NEW SECTION. Section 13. Allocation of receipts to income or principal -- entity defined. (1) For the purposes of this section, "entity" means a corporation, partnership, limited liability company, regulated investment company, real estate investment trust, common trust fund, or any other organization in which a trustee has an interest other than a trust or decedent's estate to which [section 14] applies, a business or activity to which [section 15] applies, or an asset-backed security to which [section 27] applies.

(2) Except as otherwise provided in this section, a trustee shall allocate to income money received from an entity.

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

(a) property other than money;

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

(c) money received in total or partial liquidation of the entity; and

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

(4) For purposes of subsection (3)(c):

(a) money is received in partial liquidation:

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

(ii) if the total amount of money and property received in a distribution or series of related distributions is greater than 20% of the entity's gross assets, as shown by the entity's yearend financial statements immediately preceding the initial receipt;

(b) money is not received in partial liquidation, nor may it be taken into account under subsection (4)(a)(ii), to the extent that it does not exceed the amount of income tax that a trustee or beneficiary is required to pay on taxable income of the entity that distributes the money.

(5) A trustee may rely on a statement made by an entity about the source or character of a distribution

if the statement is made at or near the time of distribution by the entity's board of directors or other person or group of persons authorized to exercise powers to pay money or transfer property comparable to those of a corporation's board of directors.

NEW SECTION. Section 14. Allocation of amounts received from specified trusts or estates. A trustee shall allocate to income an amount received as a distribution of income from a trust or a decedent's estate, other than an interest in an investment entity, in which the trust has an interest other than a purchased interest, and shall allocate to principal an amount received as a distribution of principal from the trust or estate.

NEW SECTION. Section 15. Separate accounting records for business or other activity. (1) If a trustee who conducts a business or other activity determines that it is in the best interest of all the beneficiaries to account separately for the business or other activity instead of accounting for it as part of the trust's general accounting records, the trustee may maintain separate accounting records for its transactions, whether or not its assets are segregated from other trust assets.

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

(3) Businesses and other activities for which a trustee may maintain separate accounting records include the following:

- (a) retail, manufacturing, service, and other traditional business activities;
- (b) farming;
- (c) raising and selling livestock and other animals;
- (d) managing rental properties;
- (e) extracting minerals and other natural resources;
- (f) timber operations; and
- (g) activities to which [section 26] applies.

NEW SECTION. Section 16. Amounts allocated to principal. A trustee shall allocate to principal:

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

(2) subject to any contrary rules in [sections 13 through 15], [sections 16 through 19], and [sections 20 through 27], money or other property received from the sale, exchange, liquidation, or change in form of a principal asset, including realized profit;

(3) amounts recovered from third parties to reimburse the trust because of disbursements described in [section 29(1)(g)] or for other reasons to the extent not based on the loss of income;

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

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

(6) other receipts allocated to principal as provided in [sections 20 through 27].

NEW SECTION. Section 17. Amounts received from rental property allocation. Unless the trustee accounts for receipts from rental property pursuant to [section 15], the trustee shall allocate to income an amount received as rent of real or personal property, including an amount received for cancellation or renewal of a lease. An amount received as a refundable deposit, including a security deposit or a deposit that is to be applied as rent for future periods, must be added to principal and held subject to the terms of the lease and is not available for distribution to a beneficiary until the trustee's contractual obligations have been satisfied with respect to that amount.

NEW SECTION. Section 18. Interest on obligation to pay money -- allocation. (1) An amount received as interest, whether determined at a fixed, variable, or floating rate, on an obligation to pay money to the trustee, including an amount received as consideration for prepaying principal, must be allocated to income without any provision for amortization of premium.

(2) An amount received from the sale, redemption, or other disposition of an obligation to pay money to the trustee more than 1 year after it is purchased or acquired by the trustee, including an obligation whose purchase price or its value when it is otherwise acquired is less than its value at maturity, must be allocated to

principal. If the obligation matures within 1 year after it is purchased or acquired by the trustee, an amount received in excess of its purchase price or its value when it is otherwise acquired must be allocated to income.

(3) This section does not apply to an obligation to which [section 21, 22, 23, 24, 26, or 27] applies.

NEW SECTION. Section 19. Life insurance policy proceeds -- proceeds of contracts insuring against certain losses -- allocation. (1) Except as otherwise provided in subsection (2), a trustee shall allocate to principal the proceeds of a life insurance policy or other contract in which the trust or its trustee is named as beneficiary, including a contract that insures the trust or its trustee against loss for damage to, destruction of, or loss of title to a trust asset. The trustee shall allocate dividends on an insurance policy to income if the premiums on the policy are paid from income and to principal if the premiums are paid from principal.

(2) A trustee shall allocate to income proceeds of a contract that insures the trustee against loss of occupancy or other use by an income beneficiary, loss of income, or, subject to [section 15], loss of profits from a business.

(3) This section does not apply to a contract to which [section 21] applies.

NEW SECTION. Section 20. Insubstantial allocation -- allocation of entire amount to principal -- exceptions. (1) If a trustee determines that an allocation between principal and income required by [section 21, 22, 23, 24, or 27] is insubstantial, the trustee may allocate the entire amount to principal unless one of the circumstances described in [section 4(2)] applies to the allocation. This power may be exercised by a cotrustee in the circumstances described in [section 4(3)] and may be released for the reasons and in the manner provided in [section 4(4) and (5)].

(2) An allocation is presumed to be insubstantial in either of the following cases:

(a) when the amount of the allocation would increase or decrease net income in an accounting period, as determined before the allocation, by less than 10%; or

(b) when the value of the asset producing the receipt for which the allocation would be made is less than 10% of the total value of the trust's assets at the beginning of the accounting period.

(3) Nothing in this section imposes a duty on the trustee to make an allocation under this section, and the trustee is not liable for failure to make an allocation under this section.

NEW SECTION. Section 21. Payments characterized as interest or dividend -- allocation to income -- allocation of other payments -- excess allocation to income in order to obtain estate tax marital

deduction. (1) In this section, "payment" means a payment that a trustee may receive over a fixed number of years or during the life of one or more individuals because of services rendered or property transferred to the payer in exchange for future payments. The term includes a payment made in money or property from the payer's general assets or from a separate fund created by the payer, including a private or commercial annuity, an individual retirement account, and a pension, profit-sharing, stock-bonus, or stock-ownership plan.

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

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

(4) If, to obtain an estate tax marital deduction for a trust, a trustee allocates more of a payment to income than provided by this section, the trustee shall allocate to income the additional amount necessary to obtain the marital deduction.

(5) This section does not apply to payments to which [section 22] applies.

NEW SECTION. Section 22. Receipts from liquidating assets -- allocation. (1) In this section, "liquidating asset" means an asset whose value will diminish or terminate because the asset is expected to produce receipts for a period of limited duration. The term includes a leasehold, patent, copyright, royalty right, and right to receive payments under an arrangement that does not provide for the payment of interest on the unpaid balance. The term does not include a payment subject to [section 21], natural resources subject to [section 23], timber subject to [section 24], a derivative or option subject to [section 26], an asset subject to [section 27], or any asset for which the trustee establishes a reserve for depreciation under [section 30].

(2) A trustee shall allocate to income 10% from a liquidating asset and the balance to principal.

NEW SECTION. Section 23. Receipts from mineral interests and other natural resources -- allocation. (1) To the extent that a trustee accounts for receipts from an interest in minerals or other natural

resources pursuant to this section, the trustee shall allocate them as follows:

(a) if received as a nominal bonus, nominal delay rental, or nominal annual rent on a lease, a receipt must be allocated to income;

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

(c) if an amount received as a royalty, shut-in-well payment, take-or-pay payment, bonus, or delay rental is more than nominal, 90% must be allocated to principal and the balance to income; and

(d) if an amount is received from a working interest or any other interest in mineral or other natural resources not described in subsection (1)(a), (1)(b), or (1)(c), 90% of the net amount received must be allocated to principal and the balance to income.

(2) An amount received on account of an interest in water that is renewable must be allocated to income. If the water is not renewable, 90% of the amount must be allocated to principal and the balance to income.

(3) [Sections 1 through 33] apply whether or not a decedent or donor was extracting minerals, water, or other natural resources before the interest became subject to the trust.

NEW SECTION. Section 24. Receipts from sale of timber and related products -- allocation. (1)

To the extent that a trustee accounts for receipts from the sale of timber and related products pursuant to this section, the trustee shall allocate the net receipts as follows:

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

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

(c) to or between income and principal if the net receipts are from the lease of timberland or from a contract to cut timber from land owned by a trust, by determining the amount of timber removed from the land under the lease or contract and applying the rules in subsections (1)(a) and (1)(b);

(d) to principal to the extent that advance payments, bonuses, and other payments are not allocated pursuant to subsection (1)(a), (1)(b), or (1)(c).

(2) In determining net receipts to be allocated under subsection (1), a trustee shall deduct and transfer to principal a reasonable amount for depletion.

(3) [Sections 1 through 33] apply whether or not a decedent or transferor was harvesting timber from the

property before it became subject to the trust.

NEW SECTION. Section 25. Increasing income in order to maintain marital deduction. (1) If a marital deduction is allowed for all or part of a trust whose assets consist substantially of property that does not provide the spouse with sufficient income from or use of the trust assets and if the amounts that the trustee transfers from principal to income under [section 4] and distributes to the spouse from principal pursuant to the terms of the trust are insufficient to provide the spouse with the beneficial enjoyment required to obtain the marital deduction, the spouse may require the trustee to make property productive of income or convert it into productive property or exercise the power under [section 4(1)] within a reasonable time. The trustee may decide which action or combination of actions to take.

(2) In cases not governed by subsection (1), proceeds from the sale or other disposition of a trust asset are principal without regard to the amount of income the asset produces during any accounting period.

NEW SECTION. Section 26. Transactions in derivatives -- allocations of receipts and disbursements -- options to buy or sell property -- allocation of amounts received or paid. (1) In this section, "derivative" means a contract or financial instrument or a combination of contracts and financial instruments that gives a trust the right or obligation to participate in some or all changes in the price of a tangible or intangible asset or group of assets or changes in a rate, an index of prices or rates, or other market indicator for an asset or a group of assets.

(2) To the extent that a trustee does not account under [section 15] for transactions in derivatives, the trustee shall allocate to principal receipts from and disbursements made in connection with those transactions.

(3) If a trustee grants an option to buy property from the trust, whether or not the trust owns the property when the option is granted, grants an option that permits another person to sell property to the trust, or acquires an option to buy property for the trust or an option to sell an asset owned by the trust and the trustee or other owner of the asset is required to deliver the asset if the option is exercised, an amount received for granting the option must be allocated to principal. An amount paid to acquire the option must be paid from principal. A gain or loss realized upon the exercise of an option, including an option granted to a trustor of the trust for services rendered, must be allocated to principal.

NEW SECTION. Section 27. Payments from collateral financial assets and payments in exchange for interest in asset-backed security -- allocation. (1) In this section, "asset-backed security" means an asset

whose value is based upon the right it gives the owner to receive distributions from the proceeds of financial assets that provide collateral for the security. The term includes an asset that gives the owner the right to receive from the collateral financial assets only the interest or other current return or only the proceeds other than interest or current return. The term does not include an asset to which [section 13 or 21] applies.

(2) If a trust receives a payment from interest or other current return and from other proceeds of the collateral financial assets, the trustee shall allocate to income the portion of the payment that the payer identifies as being from interest or other current return and shall allocate the balance of the payment to principal.

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

NEW SECTION. Section 28. Disbursements from income. A trustee shall make the following disbursements from income to the extent that they are not disbursements to which [section 8(3)(b) or 8(3)(c)] applies:

(1) except as otherwise ordered by the court, one-half of the regular compensation of the trustee and of any person providing investment advisory or custodial services to the trustee;

(2) except as otherwise ordered by the court, one-half of all expenses for accountings, judicial proceedings, or other matters that involve both the income and remainder interests;

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

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

NEW SECTION. Section 29. Disbursements from principal. (1) A trustee shall make the following disbursements from principal:

(a) except as otherwise ordered by the court, the remaining one-half of the disbursements described in [section 28(1) and (2)];

(b) except as otherwise ordered by the court, all of the trustee's compensation calculated on principal

as a fee for acceptance, distribution, or termination and disbursements made to prepare property for sale;

(c) payments on the principal of a trust debt;

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

(e) premiums paid on a policy of insurance not described in [section 28(4)] of which the trust is the owner and beneficiary;

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

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

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

NEW SECTION. Section 30. Assets subject to depreciation -- transfer from income to principal of portion of net cash receipts. (1) For purposes of this section, "depreciation" means a reduction in value due to wear, tear, decay, corrosion, or gradual obsolescence of a fixed asset having a useful life of more than 1 year.

(2) A trustee may transfer from income to principal a reasonable amount of the net cash receipts from a principal asset that is subject to depreciation, under generally accepted accounting principles, but may not transfer any amount for depreciation under this section in any of the following circumstances:

(a) as to the portion of real property used or available for use by a beneficiary as a residence or of tangible personal property held or made available for the personal use or enjoyment of a beneficiary;

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

(c) if the trustee is accounting under [section 15] for the business or activity in which the asset is used.

(3) An amount transferred from income to principal need not be held as a separate fund.

NEW SECTION. Section 31. Transfer from income to principal in anticipation of principal disbursement. (1) If a trustee makes or expects to make a principal disbursement described in this section, the

trustee may transfer an appropriate amount from income to principal in one or more accounting periods to reimburse principal or to provide a reserve for future principal disbursements.

(2) Principal disbursements to which subsection (1) applies include the following, but only to the extent that the trustee has not been and does not expect to be reimbursed by a third party:

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

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

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

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

(e) disbursements described in [section 29(1)(g)].

(3) If the asset whose ownership gives rise to the disbursements becomes subject to a successive income interest after an income interest ends, a trustee may continue to transfer amounts from income to principal as provided in subsection (1).

NEW SECTION. Section 32. Payment of taxes. (1) A tax required to be paid by a trustee based on receipts allocated to income must be paid from income.

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

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

(a) from income to the extent that receipts from the entity are allocated to income;

(b) from principal to the extent that both of the following apply:

(i) receipts from the entity are allocated to principal; and

(ii) the trust's share of the entity's taxable income exceeds the total receipts described in subsection (3)(a) and subsection (3)(b)(i).

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

NEW SECTION. Section 33. Adjustments between principal and income in certain cases. (1) A fiduciary may make adjustments between principal and income to offset the shifting of economic interests or tax benefits between income beneficiaries and remainder beneficiaries that arise from any of the following:

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

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

(c) the ownership by a decedent's estate or trust of an interest in an entity whose taxable income, whether or not distributed, is includable in the taxable income of the estate, trust, or a beneficiary.

(2) If the amount of an estate tax marital deduction or charitable contribution deduction is reduced because a fiduciary deducts an amount paid from principal for income tax purposes instead of deducting it for estate tax purposes and as a result estate taxes paid from principal are increased and income taxes paid by a decedent's estate, trust, or beneficiary are decreased, each estate, trust, or beneficiary that benefits from the decrease in income tax shall reimburse the principal from which the increase in estate tax is paid. The total reimbursement must equal the increase in the estate tax to the extent that the principal used to pay the increase would have qualified for a marital deduction or charitable contribution deduction but for the payment. The proportionate share of the reimbursement for each estate, trust, or beneficiary whose income taxes are reduced must be the same as its proportionate share of the total decrease in income tax. An estate or trust shall reimburse principal from income.

NEW SECTION. Section 34. Repealer. Sections 72-34-401, 72-34-402, 72-34-403, 72-34-404, 72-34-405, 72-34-406, 72-34-407, 72-34-408, 72-34-409, 72-34-410, 72-34-411, 72-34-412, and 72-34-416, MCA, are repealed.

NEW SECTION. Section 35. Codification instruction. [Sections 1 through 33] are intended to be codified as an integral part of Title 72, chapter 34, and the provisions of Title 72, chapter 34, apply to [sections 1 through 33].

NEW SECTION. Section 36. Coordination instruction. If __ Bill No. __ [LC 1497] is not passed and approved, then [section 4(1)(a) of this act] is void.

- END -

