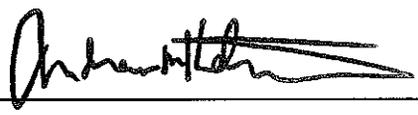


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Chapter No. 513
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HOUSE BILL NO. 846

Originated in House  Clerk

HOUSE BILL NO. 846

AN ACT TO BE KNOWN AND CITED AS THE MISSISSIPPI QUALIFIED DISPOSITION IN TRUST ACT; TO CREATE NEW SECTION 91-9-701, MISSISSIPPI CODE OF 1972, TO ENACT A SHORT TITLE; TO CREATE NEW SECTION 91-9-703, MISSISSIPPI CODE OF 1972, TO CREATE DEFINITIONS; TO CREATE NEW SECTION 91-9-705, MISSISSIPPI CODE OF 1972, TO SPECIFY THE CONTENTS OF A QUALIFIED AFFIDAVIT; TO CREATE NEW SECTION 91-9-707, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR CLAIMS AND ACTIONS AGAINST PROPERTY SUBJECT TO QUALIFIED DISPOSITION; TO CREATE NEW SECTION 91-9-709, MISSISSIPPI CODE OF 1972, TO SPECIFY THE TRANSFEROR'S POWERS AND RIGHTS; TO CREATE NEW SECTION 91-9-711, MISSISSIPPI CODE OF 1972, TO PROVIDE WHEN AND UNDER WHAT CIRCUMSTANCES A QUALIFIED DISPOSITION MAY BE AVOIDED; TO CREATE NEW SECTION 91-9-713, MISSISSIPPI CODE OF 1972, TO ENACT A SPENDTHRIFT PROVISION; TO CREATE NEW SECTION 91-9-715, MISSISSIPPI CODE OF 1972, TO SPECIFY PERSONS QUALIFIED TO SERVE AS TRUSTEES AND ADVISORS; TO CREATE NEW SECTION 91-9-717, MISSISSIPPI CODE OF 1972, TO SPECIFY PERSONS QUALIFIED TO SERVE AS INVESTMENT ADVISORS; TO CREATE NEW SECTION 91-9-719, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR APPOINTMENT OF SUCCESSOR TRUSTEES; TO CREATE NEW SECTION 91-9-721, MISSISSIPPI CODE OF 1972, TO PROVIDE WHEN A TRUST IS NOT REVOCABLE; TO CREATE NEW SECTION 91-9-723, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR APPLICABILITY OF THE ARTICLE; TO AMEND SECTIONS 91-9-503, 91-9-505 AND 91-9-507, MISSISSIPPI CODE OF 1972, TO CONFORM; TO REPEAL SECTION 91-9-509, MISSISSIPPI CODE OF 1972, WHICH PROVIDES FOR THE SITUATION WHEN A SETTLOR IS BENEFICIARY OF A SETTLOR-CREATED TRUST AS INCONSISTENT WITH THIS ACT; AND FOR RELATED PURPOSES.

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

SECTION 1. The following shall be codified as Section 91-9-701, Mississippi Code of 1972:

91-9-701. **Short Title.** This article shall be known and may be cited as the Mississippi Qualified Disposition in Trust Act.

SECTION 2. The following shall be codified as Section 91-9-703, Mississippi Code of 1972:

91-9-703. **Definitions.** As used in this article, unless the context otherwise requires:

(a) "Claim" means a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.

(b) "Creditor" means, with respect to a transferor, a person who has a claim.

(c) "Debt" means liability on a claim.

(d) "Disposition" means a transfer, conveyance or assignment of property, including a change in the legal ownership of property occurring upon the substitution of one (1) trustee for another or the addition of one or more new trustees. "Disposition" also includes the exercise of a power so as to cause a transfer of property to a trustee or trustees, but shall not include the release or relinquishment of an interest in property that, until the release or relinquishment, was the subject of a qualified disposition.

(e) "Investment advisor" means a person given authority by the terms of a qualified disposition trust to direct, consent to or disapprove a transferor's actual or proposed investment decisions, distribution decisions or other decisions of the transferor.

(f) "Investment decision" means the retention, purchase, sale, exchange, tender, or other transaction affecting the ownership of or rights in investments.

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

(h) "Property" includes real property, personal property, and interests in real or personal property.

(i) "Qualified affidavit" means a sworn affidavit signed by the transferor before making a qualified disposition. In the event of a disposition by a transferor who is a trustee, the affidavit shall be signed by the transferor who made the original disposition to the trustee, or a predecessor trustee, in a form that meets the requirements of subsections (n)(2) and (3) of this section and shall state facts as of the time of the original disposition.

(j) "Qualified disposition" means a disposition by or from a transferor to a qualified trustee or qualified trustees, with or without consideration, by means of a qualified disposition trust, after the transferor executes a qualified affidavit.

(k) "Qualified trustee" means a person who:

(1) In the case of a natural person, is a resident of this state, or, in all other cases, is authorized by the law of this state to act as a trustee and whose activities are subject to supervision by the Mississippi Department of Banking and Consumer Finance, the Federal Deposit Insurance Corporation, the Comptroller of the Currency, or the Office of Thrift Supervision or any successor to them;

(2) Maintains or arranges for custody in this state of some or all of the property that is the subject of the qualified disposition, maintains records for the trust on an exclusive or nonexclusive basis, prepares or arranges for the preparation of required income tax returns for the trust, or otherwise materially participates in the administration of the trust; and

(3) Is not the transferor.

(1) "Spouse" or "former spouse" means only persons to whom the transferor was legally married at, or before, the time the qualified disposition is made.

(m) "Transferor" means a person who, directly or indirectly, makes a disposition or causes a disposition to be made in such person's capacity:

(1) As an owner of property;

(2) As a holder of a power of appointment that authorizes the holder to appoint in favor of the holder, the holder's creditors, the holder's estate or the creditors of the holder's estate; or

(3) As a trustee.

(n) "Qualified disposition trust" means a trust instrument appointing a qualified trustee or qualified trustees for the property that is the subject of a disposition, which instrument:

(1) Expressly incorporates the law of this state to govern the validity, construction and administration of the trust;

(2) Is irrevocable; and

(3) Provides that the interest of the transferor or other beneficiary in the trust property or the income from the trust property may not be transferred, assigned, pledged or mortgaged, whether voluntarily or involuntarily, before the qualified trustee or qualified trustees actually distribute the property or income from the property to the beneficiary.

SECTION 3. The following shall be codified as Section 91-9-705, Mississippi Code of 1972:

91-9-705. **Qualified affidavit; contents.** A qualified affidavit shall state that:

(a) The transferor has full right, title, and authority to transfer the assets to the trust;

(b) The transfer of the assets to the trust will not render the transferor insolvent;

(c) The transferor does not intend to defraud a creditor by transferring the assets to the trust;

(d) The transferor does not have any pending or threatened court actions against the transferor, except for those court

actions identified by the transferor on an attachment to the affidavit;

(e) The transferor is not involved in any administrative proceedings, except for those administrative proceedings identified on an attachment to the affidavit;

(f) The transferor does not contemplate filing for relief under the provisions of the federal bankruptcy code;

(g) The assets being transferred to the trust were not derived from unlawful activities; and

(h) The transferor is a named insured of a general liability insurance policy and, if applicable, a professional liability insurance policy, with policy limits of at least One Million Dollars (\$1,000,000.00) for each respective policy.

SECTION 4. The following shall be codified as Section 91-9-707, Mississippi Code of 1972:

91-9-707. Claims or actions against property subject to qualified disposition; claims or actions against trustees.

(a) Notwithstanding any law to the contrary, no action of any kind, including, but not limited to, an action to enforce a judgment entered by a court or other body having adjudicative authority, shall be brought at law or in equity for an attachment or other provisional remedy against property that is the subject of a qualified disposition or for the avoidance of a qualified disposition, unless the action is brought pursuant to the provisions of the Uniform Fraudulent Transfer Act, Section

15-3-101 et seq., and in the case of a creditor whose claim arose after a qualified disposition, unless the qualified disposition was also made with actual intent to defraud the creditor.

(b) (1) Notwithstanding Section 15-3-115, a creditor's claim under subsection (a) shall be extinguished:

(A) If the person is a creditor when the qualified disposition to a qualified disposition trust is made, unless the action is commenced within the later of two (2) years after the qualified disposition is made or six (6) months after the person discovers or reasonably should have discovered the qualified disposition; or

(B) If the person becomes a creditor after the qualified disposition to a qualified disposition trust is made, unless the action is commenced within two (2) years after the qualified disposition is made;

(2) If subsection (b)(1) applies:

(A) A person shall be deemed to have discovered the existence of a qualified disposition to a qualified disposition trust at the time any public record is made of any transfer of property relative to the qualified disposition, including, but not limited to, the conveyance of real property that is recorded in the office of the chancery clerk of the county in which the property is located or the filing of a financing statement under Title 75, Chapter 9, Mississippi Code of 1972, or the equivalent recording or filing of either with the appropriate

person or official under the laws of a jurisdiction other than this state; and

(B) No creditor shall bring an action with respect to property that is the subject of a qualified disposition unless that creditor proves by clear and convincing evidence that the settlor's transfer of the property was made with the intent to defraud that specific creditor.

(c) For purposes of this article, a qualified disposition that is made by means of a disposition by a transferor who is a trustee shall be deemed to have been made as of the time, whether before, on, or after July 1, 2014, the property that is the subject of the qualified disposition was originally transferred to the transferor acting in the capacity of trustee, or any predecessor trustee, in a form that meets the requirements of Section 91-9-703(n) (2) and (3).

(d) Notwithstanding any law to the contrary, a creditor, including a creditor whose claim arose before or after a qualified disposition, or any other person shall have only the rights with respect to a qualified disposition as are provided in this section and Section 91-9-711, and neither a creditor nor any other person shall have any claim or cause of action against the trustee, an advisor of a trust that is the subject of a qualified disposition, or against any person involved in the counseling, drafting, preparation, execution, or funding of a trust that is the subject of a qualified disposition. For purposes of this section,

counseling, drafting, preparation, execution or funding of a trust that is the subject of a qualified disposition includes the counseling, drafting, preparation, execution and funding of a limited partnership or a limited liability company if interests in the limited partnership or limited liability company are subsequently transferred to the trust that is the subject of a qualified disposition.

(e) Notwithstanding any law to the contrary, no action of any kind, including, but not limited to, an action to enforce a judgment entered by a court or other body having adjudicative authority, shall be brought at law or in equity against a trustee or an advisor of a trust that is the subject of a qualified disposition, or against any person involved in the counseling, drafting, preparation, execution or funding of a trust that is the subject of a qualified disposition, if, as of the date the action is brought, an action by a creditor with respect to the qualified disposition would be barred under this section.

(f) In circumstances where more than one (1) qualified disposition is made by means of the same qualified disposition trust, then:

(1) The making of a subsequent qualified disposition shall be disregarded in determining whether a creditor's claim with respect to a prior qualified disposition is extinguished as provided in subsection (b); and

(2) Any distribution to a beneficiary shall be deemed to have been made from the latest qualified disposition.

(g) If, in any action brought against a trustee of a trust that is the result of a qualified disposition, a court takes any action whereby the court declines to apply the law of this state in determining the effect of a spendthrift provision of the trust, the trustee of the trust shall immediately upon the court's action and without the further order of any court, cease in all respects to be trustee of the trust and a successor trustee shall succeed as trustee in accordance with the terms of the trust or, if the trust does not provide for a successor trustee and the trust would otherwise be without a trustee, a court of this state, upon the application of any beneficiary of the trust, shall appoint a successor trustee upon the terms and conditions it determines to be consistent with the purposes of the trust and this article. Upon the trustee's ceasing to be trustee, the trustee shall have no power or authority other than to convey the trust property to the successor trustee named in the trust in accordance with this section.

(h) A trust that is the subject of a qualified disposition shall be subject to this section whether or not the transferor retains any or all of the powers and rights described in Section 91-9-709 or serves as an investment advisor pursuant to Section 91-9-717.

(i) (1) Notwithstanding any provision of subsection (a) or (b) to the contrary, the limitations on actions by creditors in law or equity shall not apply and the creditors' claims shall not be extinguished if the transferor is indebted on account of an agreement, judgment, or order of a court for the payment of one or more of the following:

(A) To any person to whom the transferor is indebted on account of an agreement or order of court for the payment of support or alimony in favor of the transferor's spouse, former spouse or children, or for a division or distribution of property in favor of the transferor's spouse or former spouse, but only to the extent of such debt;

(B) To any person who suffers death, personal injury, or property damage on or before the date of a qualified disposition by a transferor, if the death, personal injury, or property damage is at any time determined to have been caused, in whole or in part, by the tortious act or omission of either the transferor or by another person for whom the transferor is or was vicariously liable, but only to the extent of the claim against the transferor or other person for whom the transferor is or was vicariously liable;

(C) To the State of Mississippi or any political subdivision thereof, including, but not limited to, court-ordered restitution in a criminal matter; or

(D) To any creditor in an amount not to exceed One Million Five Hundred Thousand Dollars (\$1,500,000.00) if the transferor failed to maintain a One Million Dollar (\$1,000,000.00) umbrella policy as required by subsection (1).

(2) (A) A claim provided under this subsection (i) shall be asserted against a trustee only:

(i) Upon a final nonappealable determination of a Mississippi court or a fully domesticated, final nonappealable order of a court of another state that the debt is past due; and

(ii) After the court has determined that the claimant has made reasonable attempts to collect the debt from any other sources of the transferor or that any attempt would be futile.

(B) Nothing in this subsection (i)(2) shall be construed to prohibit the court from making the findings required in subsection (i)(2)(A) in the same proceeding and order.

(j) Subsection (i) shall not apply to any claim for forced heirship, legitime or elective share.

(k) In addition to provisions of subsection (j), to the extent subsection (j) applies to the laws of any foreign country:

(1) Neither a qualified disposition trust nor any disposition made subject to the terms of the qualified disposition trust is subject to the laws of any foreign country, nor is any such qualified disposition trust or the disposition void,

voidable, liable to be set aside, or defective in any manner for any reason including, but not limited to:

(A) The law of any foreign country prohibits or does not recognize the concept of a qualified disposition trust; or

(B) The qualified disposition trust or disposition avoids or defeats any right, claim, or interest conferred by the law of a foreign country upon any person by reason of a personal relationship to the settlor or by way of heirship rights or contravenes any rule or law of a foreign country or any foreign country's judicial or administrative order or action intended to recognize, protect, enforce, or give effect to the right, claim, or interest.

(2) Relative to any foreign country or any interest in property arising or originating under the laws of any foreign country:

(A) No form of forced heirship, legitime, forced share or any similar heirship rights or form of transmission or transfer of property from a decedent or from a living person, or any restrictions on transmission or transfer of property from a decedent or a living person is recognized by this state; or

(B) No heirship rights described in subsection (k) (2) (A) conferred under the law of a foreign country shall constitute an obligation or liability, the transfer, conveyance or

devise of which, would violate Title 15, Chapter 3, Mississippi Code of 1972; and

(C) Subsection (k)(1) shall apply to all realty or other forms of immovable property physically in this state, as well as to all personal or movable property wherever situated if owned by a qualified disposition trust containing a state jurisdiction provision designating that the law of this state controls the qualified disposition trust;

(3) No judgment or other holding of any judicial body of any foreign country, including, but not limited to, any court, administrative body or other entity or organization purportedly having the power to make judicial or administrative decisions of any foreign country, shall be recognized or enforced or give rise to any equitable forms of relief, including, but not limited to, estoppel, to the extent the judgment or other holding concerns a qualified disposition trust containing a state jurisdiction provision designating that the law of this state controls the qualified disposition trust or to the extent the judgment or other holding concerns property held by the qualified disposition trust.

(4) Subsection (a) applies in addition to all other provisions of this article.

(1) The transferor shall obtain a general liability policy and, if applicable, a professional liability policy, and each policy must have a policy limit of at least One Million Dollars (\$1,000,000.00). Policy premiums must be paid by the transferor.

SECTION 5. The following shall be codified as Section 91-9-709, Mississippi Code of 1972:

91-9-709. **Transferor's powers and rights.** A transferor shall have only the powers and rights conferred by the qualified disposition trust. The powers and rights conferred by the qualified disposition trust upon the transferor are personal powers and rights that may not be exercised by a creditor or any other person, except as expressly permitted by the trust. Except as permitted by Sections 91-9-717 and 91-9-721, the transferor shall have no rights or authority with respect to the corpus of the trust or the income from the trust, and any agreement or understanding purporting to grant or permit the retention of any greater rights or authority shall be void.

SECTION 6. The following shall be codified as Section 91-9-711, Mississippi Code of 1972:

91-9-711. **Avoidance of qualified disposition.** (a) A qualified disposition shall be avoided only to the extent necessary to satisfy the transferor's debt to the creditor at whose instance the disposition had been avoided, together with costs, including attorneys' fees, that the court may allow.

(b) In the event any qualified disposition shall be avoided as provided in subsection (a), then:

(1) If the court is satisfied that a qualified trustee has not acted in bad faith in accepting or administering the property that is the subject of the qualified disposition:

(A) The qualified trustee shall have a first and paramount lien against the property that is the subject of the qualified disposition in an amount equal to the entire cost, including attorneys' fees, properly incurred by the qualified trustee in the defense of the action or proceedings to avoid the qualified disposition;

(B) The qualified disposition shall be avoided subject to the proper fees, costs, preexisting rights, claims and interests of the qualified trustee and of any predecessor qualified trustee that has not acted in bad faith; and

(C) For purposes of this subsection (b)(1), it shall be presumed that the qualified trustee did not act in bad faith merely by accepting the property; and

(2) If the court is satisfied that a beneficiary of a trust has not acted in bad faith, the avoidance of the qualified disposition shall be subject to the right of the beneficiary to retain any distribution made upon the exercise of a trust power or discretion vested in the qualified trustee or qualified trustees, which power or discretion was properly exercised prior to the creditor's commencement of an action to avoid the qualified disposition. For purposes of this subsection (b)(2), it shall be presumed that the beneficiary, including a beneficiary who is also a transferor of the trust, did not act in bad faith merely by creating the trust or by accepting a distribution made in accordance with the terms of the trust.

(c) A disposition by a trustee that is not a qualified trustee to a trustee that is a qualified trustee shall not be treated as other than a qualified disposition solely because the trust instrument fails to meet the requirements of Section 91-9-703(n) (1).

(d) In the case of a disposition to more than one (1) trustee, a disposition that is otherwise a qualified disposition shall not be treated as other than a qualified disposition solely because not all of the recipient trustees are qualified trustees.

SECTION 7. The following shall be codified as Section 91-9-713, Mississippi Code of 1972:

91-9-713. **Spendthrift restriction.** A spendthrift provision as described in Section 91-9-703(n) (3) shall be deemed to be a restriction on the transfer of the transferor's beneficial interest in the trust that is enforceable under applicable nonbankruptcy law within the meaning of Section 541(c) (2) of the Bankruptcy Code, codified in 11 USCS, Section 541(c) (2), or any successor provision.

SECTION 8. The following shall be codified as Section 91-9-715, Mississippi Code of 1972:

91-9-715. **Qualified trustees; advisors.** (a) For purposes of this article, neither the transferor nor any other natural person who is a nonresident of this state nor an entity that is not authorized by the law of this state to act as a trustee or whose activities are not subject to supervision as provided in

Section 91-9-703(k) (1) shall be considered a qualified trustee; however, nothing in this article shall preclude a transferor from appointing one (1) or more advisors, including, but not limited to:

(1) Advisors who have authority under the terms of the trust instrument to remove and appoint qualified trustees or trust advisors;

(2) Advisors who have authority under the terms of the trust instrument to direct, consent to or disapprove distributions from the trust; and

(3) Investment advisors, whether or not the advisors would meet the requirements imposed by Section 91-9-703(k).

(b) For purposes of subsection (a), "advisor" includes a trust "protector" or any other person who, in addition to a qualified trustee, holds one or more trust powers.

SECTION 9. The following shall be codified as Section 91-9-717, Mississippi Code of 1972:

91-9-717. **Investment advisors; service.** A person may serve as an investment advisor notwithstanding that the person is the transferor of the qualified disposition, but the person may not otherwise serve as advisor to a trust that is a qualified disposition trust except with respect to the retention of the veto right permitted by Section 91-9-721(a).

SECTION 10. The following shall be codified as Section 91-9-719, Mississippi Code of 1972:

91-9-719. **Failure to meet requirements; qualified trustees.**

If a qualified trustee of a qualified disposition trust ceases to meet the requirements of Section 91-9-703(k)(1), and there remains no trustee that meets the requirements, the qualified trustee shall be deemed to have resigned as of the time of that cessation, and thereupon the successor qualified trustee provided for in the qualified disposition trust shall become a qualified trustee of the qualified disposition trust, or in the absence of any successor qualified trustee provided for in the qualified disposition trust, then a court of this state shall, upon application of any interested party, appoint a successor qualified trustee.

SECTION 11. The following shall be codified as Section 91-9-721, Mississippi Code of 1972:

91-9-721. **Revocation.** A qualified disposition trust shall not be deemed revocable on account of its inclusion of one or more of the following:

(a) A transferor's power to veto a distribution from the trust;

(b) A power of appointment, other than a power to appoint to the transferor, the transferor's creditors, the transferor's estate or the creditors of the transferor's estate, exercisable by will or other written instrument of the transferor effective only upon the transferor's death;

(c) The transferor's potential or actual receipt of income, including rights to the income retained in the trust;

(d) The transferor's potential or actual receipt of income or principal from a charitable remainder unitrust or charitable remainder annuity trust as those terms are defined in Section 664 of the Internal Revenue Code of 1986, codified in 26 USCS Section 664, and any successor provision;

(e) The transferor's receipt each year of an amount specified in the trust instrument, the amount not to exceed five percent (5%) of the initial value of the trust or its value determined, from time to time, pursuant to the trust;

(f) The transferor's potential or actual receipt or use of principal if the potential or actual receipt or use of principal would be the result of a qualified trustee's or qualified trustees' acting:

(1) In the qualified trustee's or qualified trustees' discretion. For purposes of this section, a qualified trustee is presumed to have discretion with respect to the distribution of principal unless the discretion is expressly denied to the trustee by the terms of the trust;

(2) Pursuant to a standard that governs the distribution of principal and does not confer upon the transferor a power to consume, invade, or appropriate property for the benefit of the transferor, unless the power of the transferor is limited by an ascertainable standard relating to the health,

education, support, or maintenance within the meaning of Section 2041(b)(1)(A) or Section 2514(c)(1) of the Internal Revenue Code of 1986, codified in 26 USCS Section 2041(b)(1)(A) or 26 USCS Section 2514(c)(1), as in effect on July 1, 2014, or as later amended; or

(3) At the direction of an advisor described in Section 91-9-715 who is acting:

(i) In the advisor's discretion; or

(ii) Pursuant to a standard that governs the distribution of principal and does not confer upon the transferor a power to consume, invade, or appropriate property for the benefit of the transferor, unless the power of the transferor is limited by an ascertainable standard relating to the health, education, support, or maintenance within the meaning of Section 2041(b)(1)(A) or Section 2514(c)(1) of the Internal Revenue Code of 1986, 26 USCS Section 2041(b)(1)(A) or 26 USCS Section 2514(c)(1), as in effect on July 1, 2010, or as later amended;

(g) The transferor's right to remove a trustee or advisor and to appoint a new trustee or advisor; however, the right shall not include the appointment of a person who is a related or subordinate party with respect to the transferor within the meaning of Section 672(c) of the Internal Revenue Code of 1986, 26 USCS Section 672(c), and any successor provision;

(h) The transferor's potential or actual use of real property held under a qualified personal residence trust within

the meaning of the term as described in Section 2702(c) of the Internal Revenue Code of 1986, codified in 26 USCS Section 2702(c), and any successor provision;

(i) The transferor's potential or actual receipt of income or principal to pay, in whole or in part, income taxes due on income of the trust if the potential or actual receipt of income or principal is pursuant to a provision in the qualified disposition trust that expressly permits a distribution to the transferor as reimbursement for the taxes and if the distribution would be the result of a qualified trustee's or qualified trustees' acting:

(1) In the qualified trustee's or qualified trustees' discretion or pursuant to a mandatory direction in the qualified disposition trust; or

(2) At the direction of an advisor described in Section 91-9-717, who is acting in the advisor's discretion;

(j) The ability, whether pursuant to direction in the qualified disposition trust or discretion of a qualified trustee to pay, after the death of the transferor, all or any part of the debts of the transferor outstanding at the time of the transferor's death, the expenses of administering the transferor's estate, or any estate or inheritance tax imposed on or with respect to the transferor's estate; and

(k) A qualified trustee's or qualified trustees' authority to make distributions to pay taxes in lieu of or in addition to

the power to make a distribution for taxes pursuant to subsection (c), (f), (i), or (j) by direct payment to the taxing authorities.

SECTION 12. The following shall be codified as Section 91-9-723, Mississippi Code of 1972:

91-9-723. **Application of article.** This article shall apply to qualified dispositions and dispositions by transferors who are trustees made on or after July 1, 2014.

SECTION 13. Section 91-9-503, Mississippi Code of 1972, is amended as follows:

91-9-503. * * * If the trust instrument provides that a beneficiary's interest in income or principal or both of a trust is not subject to voluntary or involuntary transfer, the beneficiary's interest in income or principal or both under the trust may not be transferred and is not subject to the enforcement of a money judgment until paid to the beneficiary.

SECTION 14. Section 91-9-505, Mississippi Code of 1972, is amended as follows:

91-9-505. * * * If the trust instrument provides that the trustee shall pay income or principal or both of a trust for the education or support of a beneficiary, the beneficiary's interest in income or principal or both under the trust, to the extent the income or principal or both is necessary for the education or support of the beneficiary, may not be transferred and is not subject to the enforcement of a money judgment until paid to the beneficiary. This section shall not be applied or construed to

limit or otherwise diminish a restraint on transfer that is valid under Section 91-9-503.

SECTION 15. Section 91-9-507, Mississippi Code of 1972, is amended as follows:

91-9-507. (1) * * * If the trust instrument provides that the trustee shall pay to or for the benefit of a beneficiary so much of the income or principal or both of a trust as the trustee in the trustee's discretion sees fit to pay, a transferee or creditor of the beneficiary may not compel the trustee to pay any amount from the trust that may be paid only in the exercise of the trustee's discretion. This subsection shall not be applied or construed to limit or otherwise diminish a restraint on transfer that is valid under Section 91-9-503.

(2) If the trustee has knowledge of a transfer of a beneficiary's interest in a trust or has been served with process in a proceeding for garnishment or attachment or the like by a judgment creditor seeking to reach a beneficiary's interest in a trust, and the trustee pays to or for the benefit of the beneficiary any part of the income or principal of the trust that may be paid only in the exercise of the trustee's discretion, the trustee is liable to the transferee or creditor to the extent that the payment to or for the benefit of the beneficiary impairs the right of the transferee or creditor. This subsection does not apply if the beneficiary's interest in the trust is subject to a restraint on transfer that is valid under Section 91-9-503.

(3) This section applies regardless of whether the trust instrument provides a standard for the exercise of the trustee's discretion.

(4) Nothing in this section limits any right the beneficiary may have to compel the trustee to pay to or for the benefit of the beneficiary all or part of the income or principal of a trust.

SECTION 16. Section 91-9-509, Mississippi Code of 1972, which provides for the situation when a settlor is beneficiary of a settlor-created trust, is repealed.

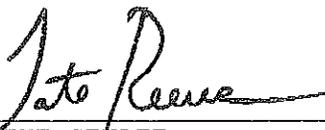
SECTION 17. The provisions of this act shall be codified as Title 91, Chapter 9, Article 15.

SECTION 18. This act shall take effect and be in force from and after July 1, 2014.

PASSED BY THE HOUSE OF REPRESENTATIVES
April 2, 2014


SPEAKER OF THE HOUSE OF REPRESENTATIVES

PASSED BY THE SENATE
April 1, 2014


PRESIDENT OF THE SENATE

APPROVED BY THE GOVERNOR


GOVERNOR

4/23/14

3:31pm