

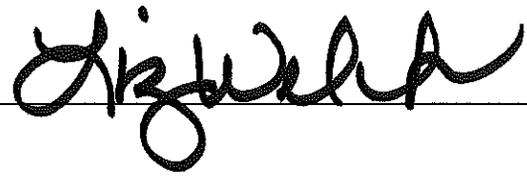
3/24/14

11:43 A.M.

Chapter No. 421
14/SS26/R935CS
CRH 17/lec
NO/KP

SENATE BILL NO. 2727

Originated in Senate



Secretary

SENATE BILL NO. 2727

AN ACT TO CREATE THE MISSISSIPPI UNIFORM TRUST CODE, TO BE CODIFIED IN TITLE 91, CHAPTER 8, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR THE CREATION, ADMINISTRATION, MODIFICATION, TERMINATION, AND VALIDITY OF TRUSTS; TO CREATE NEW SECTION 91-8-101, MISSISSIPPI CODE OF 1972, TO CREATE A SHORT TITLE; TO CREATE NEW SECTION 91-8-102, MISSISSIPPI CODE OF 1972, TO PRESCRIBE THE SCOPE OF THE ACT; TO CREATE NEW SECTION 91-8-103, MISSISSIPPI CODE OF 1972, TO ENACT DEFINITIONS; TO CREATE NEW SECTION 91-8-104, MISSISSIPPI CODE OF 1972, TO ENUMERATE THE CIRCUMSTANCES CONSTITUTING "KNOWLEDGE"; TO CREATE NEW SECTION 91-8-105, MISSISSIPPI CODE OF 1972, TO CREATE DEFAULT AND MANDATORY RULES; TO CREATE NEW SECTION 91-8-106, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR THE APPLICATION OF COMMON LAW AND PRINCIPLES OF EQUITY; TO CREATE NEW SECTION 91-8-107, MISSISSIPPI CODE OF 1972, TO PRESCRIBE GOVERNING LAW; TO CREATE NEW SECTION 91-8-108, MISSISSIPPI CODE OF 1972, TO DELINEATE THE PRINCIPAL PLACE OF ADMINISTRATION; TO CREATE NEW SECTION 91-8-109, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR NOTICE AND WAIVER THEREOF; TO CREATE NEW SECTION 91-8-110, MISSISSIPPI CODE OF 1972, TO SPECIFY QUALIFIED BENEFICIARIES; TO CREATE NEW SECTION 91-8-111, MISSISSIPPI CODE OF 1972, TO AUTHORIZE NONJUDICIAL SETTLEMENT AGREEMENTS; TO CREATE NEW SECTION 91-8-112, MISSISSIPPI CODE OF 1972, TO PROVIDE RULES OF CONSTRUCTION; TO CREATE NEW SECTION 91-8-201, MISSISSIPPI CODE OF 1972, TO SPECIFY THE ROLE OF THE COURT; TO CREATE NEW SECTION 91-8-202, MISSISSIPPI CODE OF 1972, TO SPECIFY JURISDICTION; TO CREATE NEW SECTION 91-8-203, MISSISSIPPI CODE OF 1972, TO DEFINE SUBJECT-MATTER JURISDICTION; TO CREATE NEW SECTION 91-8-204, MISSISSIPPI CODE OF 1972, TO PRESCRIBE VENUE; TO CREATE NEW SECTION 91-8-205, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR JUDICIAL ACCOUNTINGS AND SETTLEMENTS; TO

CREATE NEW SECTION 91-8-301, MISSISSIPPI CODE OF 1972, TO SPECIFY WHEN REPRESENTATION IS BINDING; TO CREATE NEW SECTION 91-8-302, MISSISSIPPI CODE OF 1972, TO PROVIDE WHEN THE HOLDER MAY BIND OTHERS; TO CREATE NEW SECTION 91-8-303, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR REPRESENTATION BY FIDUCIARIES AND PARENTS; TO CREATE NEW SECTION 91-8-304, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR REPRESENTATION BY PERSONS WITH SIMILAR INTERESTS; TO CREATE NEW SECTION 91-8-305, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR APPOINTMENT OF REPRESENTATIVES; TO CREATE NEW SECTION 91-8-401, MISSISSIPPI CODE OF 1972, TO PROVIDE METHODS FOR CREATING TRUSTS; TO CREATE NEW SECTION 91-8-402, MISSISSIPPI CODE OF 1972, TO SPECIFY REQUIREMENTS; TO CREATE NEW SECTION 91-8-403, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR FOREIGN TRUSTS; TO CREATE NEW SECTION 91-8-404, MISSISSIPPI CODE OF 1972, TO REQUIRE A LAWFUL PURPOSE; TO CREATE NEW SECTION 91-8-405, MISSISSIPPI CODE OF 1972, TO ALLOW COURT SELECTION OF A CHARITABLE PURPOSE; TO CREATE NEW SECTION 91-8-406, MISSISSIPPI CODE OF 1972, TO VOID A TRUST CREATED UNDER DURESS; TO CREATE NEW SECTION 91-8-407, MISSISSIPPI CODE OF 1972, TO ALLOW AN ORAL TRUST; TO CREATE NEW SECTION 91-8-408, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR TRUSTS FOR ANIMALS; TO CREATE NEW SECTION 91-8-409, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR NONCHARITABLE TRUSTS LACKING A DISCERNABLE BENEFICIARY; TO CREATE NEW SECTION 91-8-410, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR MODIFICATION OR TERMINATION OF TRUSTS; TO CREATE NEW SECTION 91-8-411, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR MODIFICATION OR TERMINATION OF NONCHARITABLE IRREVOCABLE TRUSTS BY CONSENT; TO CREATE NEW SECTION 91-8-412, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR MODIFICATION OR TERMINATION DUE TO UNFORESEEN CIRCUMSTANCES; TO CREATE NEW SECTION 91-8-413, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR INTERPRETATION ACCORDING TO THE SETTLOR'S INTENT; TO CREATE NEW SECTION 91-8-414, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR MODIFICATION OR TERMINATION OF AN UNECONOMIC TRUST; TO CREATE NEW SECTION 91-8-415, MISSISSIPPI CODE OF 1972, TO ALLOW REFORMATION TO CORRECT MISTAKES; TO CREATE NEW SECTION 91-8-416, MISSISSIPPI CODE OF 1972, TO ALLOW MODIFICATION TO OBTAIN TAX OBJECTIVES; TO CREATE NEW SECTION 91-8-417, MISSISSIPPI CODE OF 1972, TO ALLOW COMBINATION AND DIVISION OF TRUSTS; TO CREATE NEW SECTION 91-8-601, MISSISSIPPI CODE OF 1972, TO SPECIFY REQUIRED CAPACITY; TO CREATE NEW SECTION 91-8-602, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR REVOCATION OR AMENDMENT OF REVOCABLE TRUST; TO CREATE NEW SECTION 91-8-603, MISSISSIPPI CODE OF 1972, TO PROVIDE SETTLOR'S POWERS; TO CREATE NEW SECTION 91-8-604, MISSISSIPPI CODE OF 1972, TO PLACE A LIMITATION ON AN ACTION TO CONTEST VALIDITY; TO CREATE NEW SECTION 91-8-701, MISSISSIPPI CODE OF 1972, TO ALLOW ACCEPTANCE OR DECLINE OF TRUSTEESHIP; TO CREATE

NEW SECTION 91-8-702, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR A TRUSTEE'S BOND; TO CREATE NEW SECTION 91-8-703, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR COTRUSTEES; TO CREATE NEW SECTION 91-8-704, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR VACANCIES AND APPOINTMENTS; TO CREATE NEW SECTION 91-8-705, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR RESIGNATION OF TRUSTEES; TO CREATE NEW SECTION 91-8-706, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR REMOVAL OF A TRUSTEE; TO CREATE NEW SECTION 91-8-707, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR DELIVERY OF PROPERTY BY A FORMER TRUSTEE; TO CREATE NEW SECTION 91-8-708, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR THE COMPENSATION OF TRUSTEE, TRUST ADVISORS AND TRUST PROTECTORS; TO CREATE NEW SECTION 91-8-709, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR REIMBURSEMENT; TO CREATE NEW SECTION 91-8-710, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR EXCLUDED FIDUCIARIES OF DIRECTED TRUSTS; TO CREATE NEW SECTION 91-8-711, MISSISSIPPI CODE OF 1972, TO ALLOW A FIDUCIARY TO ACCEPT OR DECLINE SERVING A DIRECTED TRUST; TO CREATE NEW SECTION 91-8-712, MISSISSIPPI CODE OF 1972, TO PROVIDE THE FIDUCIARY'S BOND FOR A DIRECTED TRUST; TO CREATE NEW SECTION 91-8-713, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR A VACANCY IN A DIRECTED TRUST; TO CREATE NEW SECTION 91-8-714, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR THE RESIGNATION OF THE FIDUCIARY OF A DIRECTED TRUST; TO CREATE NEW SECTION 91-8-715, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR THE REMOVAL OF A FIDUCIARY OF A DIRECTED TRUST; TO CREATE NEW SECTION 91-8-801, MISSISSIPPI CODE OF 1972, TO SPECIFY THE DUTY OF A TRUST ADMINISTRATOR; TO CREATE NEW SECTION 91-8-802, MISSISSIPPI CODE OF 1972, TO REQUIRE THE DUTY OF LOYALTY; TO CREATE NEW SECTION 91-8-803, MISSISSIPPI CODE OF 1972, TO REQUIRE IMPARTIALITY; TO CREATE NEW SECTION 91-8-804, MISSISSIPPI CODE OF 1972, TO REQUIRE PRUDENCE; TO CREATE NEW SECTION 91-8-805, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR PAYMENT OF COSTS; TO CREATE NEW SECTION 91-8-806, MISSISSIPPI CODE OF 1972, TO REQUIRE THE TRUSTEE'S USE OF SPECIAL SKILLS; TO CREATE NEW SECTION 91-8-807, MISSISSIPPI CODE OF 1972, TO ALLOW DELEGATION BY A TRUSTEE; TO CREATE NEW SECTION 91-8-808, MISSISSIPPI CODE OF 1972, TO SPECIFY WHEN A SETTLOR HAS THE POWER TO DIRECT; TO CREATE NEW SECTION 91-8-809, MISSISSIPPI CODE OF 1972, TO REQUIRE CONTROL AND PROTECTION OF TRUST PROPERTY; TO CREATE NEW SECTION 91-8-810, MISSISSIPPI CODE OF 1972, TO REQUIRE RECORDKEEPING AND IDENTIFICATION OF TRUST PROPERTY; TO CREATE NEW SECTION 91-8-811, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR ENFORCEMENT AND DEFENSE OF CLAIMS; TO CREATE NEW SECTION 91-8-812, MISSISSIPPI CODE OF 1972, TO REQUIRE COLLECTION OF PROPERTY; TO CREATE NEW SECTION 91-8-813, MISSISSIPPI CODE OF 1972, TO IMPOSE A DUTY TO INFORM AND REPORT; TO CREATE NEW SECTION 91-8-814, MISSISSIPPI CODE OF 1972, TO

IMPOSE STANDARDS ON THE EXERCISE OF DISCRETIONARY POWERS; TO CREATE NEW SECTION 91-8-815, MISSISSIPPI CODE OF 1972, TO SPECIFY THE GENERAL POWERS OF A TRUSTEE; TO CREATE NEW SECTION 91-8-816, MISSISSIPPI CODE OF 1972, TO SPECIFY THE SPECIFIC POWERS OF A TRUSTEE; TO CREATE NEW SECTION 91-8-817, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR DISTRIBUTION UPON TERMINATION; TO CREATE NEW SECTION 91-8-901, MISSISSIPPI CODE OF 1972, TO INCORPORATE THE PRUDENT INVESTOR ACT BY REFERENCE; TO CREATE NEW SECTION 91-8-1001, MISSISSIPPI CODE OF 1972, TO PROVIDE REMEDIES FOR BREACH OF TRUST; TO CREATE NEW SECTION 91-8-1002, MISSISSIPPI CODE OF 1972, TO PROVIDE DAMAGES FOR BREACH OF TRUST; TO CREATE NEW SECTION 91-8-1003, MISSISSIPPI CODE OF 1972, TO ELIMINATE DAMAGES IN ABSENCE OF BREACH; TO CREATE NEW SECTION 91-8-1004, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR ATTORNEY'S FEES AND COSTS; TO CREATE NEW SECTION 91-8-1005, MISSISSIPPI CODE OF 1972, TO ENACT A LIMITATION OF ACTION AGAINST A TRUSTEE; TO CREATE NEW SECTION 91-8-1006, MISSISSIPPI CODE OF 1972, TO CREATE IMMUNITY FOR RELIANCE ON THE TRUST INSTRUMENT; TO CREATE NEW SECTION 91-8-1007, MISSISSIPPI CODE OF 1972, TO CREATE IMMUNITY FOR CERTAIN OTHER EVENTS AFFECTING ADMINISTRATION; TO CREATE NEW SECTION 91-8-1008, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR A TRUSTEE'S EXCULPATION; TO CREATE NEW SECTION 91-8-1009, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR A BENEFICIARY'S CONSENT, RELEASE OR RATIFICATION; TO CREATE NEW SECTION 91-8-1010, MISSISSIPPI CODE OF 1972, TO LIMIT A TRUSTEE'S PERSONAL LIABILITY; TO CREATE NEW SECTION 91-8-1011, MISSISSIPPI CODE OF 1972, TO SPECIFY A TRUSTEE'S INTEREST AS A GENERAL PARTNER; TO CREATE NEW SECTION 91-8-1012, MISSISSIPPI CODE OF 1972, TO PROVIDE PROTECTION FOR A PERSON DEALING WITH A TRUSTEE; TO CREATE NEW SECTION 91-8-1013, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR CERTIFICATION OF A TRUST; TO CREATE NEW SECTION 91-8-1014, MISSISSIPPI CODE OF 1972, TO ALLOW ENFORCEMENT OF A NO-CONTEST CLAUSE; TO CREATE NEW SECTION 91-8-1101, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR UNIFORMITY IN APPLICATION AND CONSTRUCTION; TO CREATE NEW SECTION 91-8-1102, MISSISSIPPI CODE OF 1972, TO SPECIFY THE RELATION OF THE ACT TO THE ELECTRONIC SIGNATURES ACT; TO CREATE NEW SECTION 91-8-1103, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR SEVERABILITY; TO CREATE NEW SECTION 91-8-1106, MISSISSIPPI CODE OF 1972, TO MAKE TRANSITION PROVISIONS; TO CREATE NEW SECTION 91-8-1107, MISSISSIPPI CODE OF 1972, TO PLACE LIMITATIONS ON SETTLORS OF IRREVOCABLE TRUSTS; TO CREATE NEW SECTION 91-8-1108, MISSISSIPPI CODE OF 1972, TO PROVIDE FACTORS TO BE CONSIDERED IN CERTAIN CHALLENGES; TO CREATE NEW SECTION 91-8-1109, MISSISSIPPI CODE OF 1972, TO PROVIDE SPECIAL PROTECTIONS FOR TRUSTS FOR THE DISABLED; TO CREATE NEW SECTION 91-8-1201, MISSISSIPPI CODE OF 1972, TO SPECIFY THE POWERS OF

TRUST ADVISORS AND TRUST PROTECTORS; TO CREATE NEW SECTION 91-8-1202, MISSISSIPPI CODE OF 1972, TO SPECIFY THE FIDUCIARY DUTY OF TRUST ADVISORS AND TRUST PROTECTORS; TO CREATE NEW SECTION 91-8-1203, MISSISSIPPI CODE OF 1972, TO SUBJECT TRUST ADVISORS AND PROTECTORS TO COURT JURISDICTION; TO CREATE NEW SECTION 91-8-1204, MISSISSIPPI CODE OF 1972, TO LIMIT THE DUTY OF REVIEW OF AN EXCLUDED FIDUCIARY; TO CREATE NEW SECTION 91-8-1205, MISSISSIPPI CODE OF 1972, TO SPECIFY THE FIDUCIARY'S LIABILITY; TO CREATE NEW SECTION 91-8-1206, MISSISSIPPI CODE OF 1972, TO CREATE A LIMITATION OF LIABILITY FOR A TRUST ADVISOR OR PROTECTOR; TO REPEAL SECTIONS 91-9-1, 91-9-2, 91-9-3, 91-9-5, 91-9-7 AND 91-9-9, MISSISSIPPI CODE OF 1972, WHICH CONSTITUTE TITLE 91, CHAPTER 9, ARTICLE 1, TRUSTS - GENERAL PROVISIONS; TO REPEAL SECTIONS 91-9-101, 91-9-103, 91-9-105, 91-9-107, 91-9-109, 91-9-111, 91-9-113, 91-9-115, 91-9-117 AND 91-9-119, MISSISSIPPI CODE OF 1972, WHICH CONSTITUTE TITLE 91, CHAPTER 9, ARTICLE 3, UNIFORM TRUSTEE POWERS; TO REPEAL SECTIONS 91-9-201, 91-9-203, 91-9-205, 91-9-207, 91-2-209, 91-9-211, 91-9-213, MISSISSIPPI CODE OF 1972, WHICH CONSTITUTE TITLE 91, CHAPTER 9, ARTICLE 5, RESIGNATION AND SUCCESSION OF TRUSTEES; TO REPEAL SECTIONS 91-9-301, 91-9-303 AND 91-9-305, MISSISSIPPI CODE OF 1972, WHICH CONSTITUTE TITLE 91, CHAPTER 9, ARTICLE 7, REMOVAL OF TRUSTEES; AND FOR RELATED PURPOSES.

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

ARTICLE 1

GENERAL PROVISIONS AND DEFINITIONS

SECTION 1. The following shall be codified as Section 91-8-101, Mississippi Code of 1972:

91-8-101. **Short title.** This chapter may be cited as the Mississippi Uniform Trust Code.

SECTION 2. The following shall be codified as Section 91-8-102, Mississippi Code of 1972:

91-8-102. **Scope.** This chapter applies to express trusts, charitable or noncharitable, and trusts created pursuant to a

statute, judgment, or decree that requires the trust to be administered in the manner of an express trust.

SECTION 3. The following shall be codified as Section 91-8-103, Mississippi Code of 1972:

91-8-103. **Definitions.** In this chapter:

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

(2) "Ascertainable standard" means a standard relating to an individual's health, education, support, or maintenance within the meaning of Section 2041(b)(1)(A) or 2514(c)(1) of the Internal Revenue Code of 1986, as in effect on the effective date of this chapter, or as later amended.

(3) "Beneficial interest" means a distribution interest or a remainder interest; provided, however, a beneficial interest specifically excludes a power of appointment or a power reserved by a settlor.

(4) "Beneficiary" means a person that:

(A) Has a present or future beneficial interest in a trust, vested or contingent; or

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

(5) "Beneficiary surrogate" means a person, other than a trustee, designated by the settlor in the trust instrument or in a writing delivered to the trustee, or designated by a trust protector or trust advisor pursuant to the terms of the trust

instrument to receive notices, information, and reports otherwise required to be provided to a beneficiary under Section 91-8-813(a) and (b).

(6) "Charitable trust" means a trust, or portion of a trust, created for a charitable purpose described in Section 91-8-405(a).

(7) "Conservator" means a person appointed by the court to administer the estate of a minor or adult individual pursuant to Section 93-13-251.

(8) "Directed trust" means a trust where through the terms of the trust, one or more persons are given the authority to direct or consent to a fiduciary's actual or proposed investment decision, distribution decision, or any other decision of the fiduciary.

(9) "Distribution interest" means:

(A) An interest, other than a remainder interest, held by an eligible distributee or permissible distributee under a trust and may be a current distribution interest or a future distribution interest;

(B) A distribution interest is classified as either a mandatory interest, a support interest or a discretionary interest; and although not the exclusive means to create each such respective distribution interest, absent clear and convincing evidence to the contrary, use of the example language accompanying the following definitions of each such respective distribution

interest results in the indicated classification of distribution interest:

(i) A mandatory interest means a distribution interest in which the timing of any distribution must occur within one (1) year from the date the right to the distribution arises and the trustee has no discretion in determining whether a distribution shall be made or the amount of such distribution;

example distribution language indicating a mandatory interest includes, but is not limited to:

a. All income shall be distributed to a named beneficiary; or

b. One Hundred Thousand Dollars (\$100,000.00) a year shall be distributed to a named beneficiary;

(ii) A support interest means a distribution interest that is not a mandatory interest but still contains mandatory language such as "shall make distributions" and is coupled with a standard capable of judicial interpretation; example distribution language indicating a support interest includes, but is not limited to:

a. The trustee shall make distributions for health, education, maintenance, and support;

b. Notwithstanding the distribution language used, if a trust instrument containing such distribution language specifically provides that the trustee exercise discretion in a reasonable manner with regard to a discretionary

interest, then notwithstanding any other provision of this subparagraph defining distribution interests, the distribution interest shall be classified as a support interest;

(iii) A discretionary interest means any interest that is not a mandatory or a support interest and is any distribution interest where a trustee has any discretion to make or withhold a distribution; example distribution language indicating a discretionary interest includes, but is not limited to:

a. The trustee may, in the trustee's sole and absolute discretion, make distributions for health, education, maintenance, and support;

b. The trustee, in the trustee's sole and absolute discretion, shall make distributions for health, education, maintenance, and support;

c. The trustee may make distributions for health, education, maintenance, and support;

d. The trustee shall make distributions for health, education, maintenance, and support; however, the trustee may exclude any of the beneficiaries or may make unequal distributions among them; or

e. The trustee may make distributions for health, education, maintenance, support, comfort, and general welfare;

f. A discretionary interest may also be evidenced by:

1. Permissive distribution language such as "may make distributions";

2. Mandatory distribution language that is negated by the discretionary distribution language contained in the trust such as "the trustee shall make distributions in the trustee's sole and absolute discretion";

g. An interest that includes mandatory distribution language such as "shall" but is subsequently qualified by discretionary distribution language shall be classified as a discretionary interest and not as a support or a mandatory interest;

(C) (i) To the extent a trust contains distribution language indicating the existence of any combination of a mandatory, support and discretionary interest, that combined interest of the trust shall be divided and treated separately as follows:

a. The trust shall be a mandatory interest only to the extent of the mandatory distribution language;

b. The trust shall be a support interest only to the extent of such support distribution language; and

c. The remaining trust property shall be held as a discretionary interest;

(ii) For purposes of this subparagraph (C), a support interest that includes mandatory distribution language such as "shall" but is subsequently qualified by discretionary distribution language, shall be classified as a discretionary interest and not as a support interest.

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

(11) "Excluded fiduciary" means any trustee, trust advisor, or trust protector to the extent that, under the terms of a trust:

(A) The trustee, trust advisor, or trust protector is excluded from exercising a power, or is relieved of a duty; and

(B) The power or duty is granted or reserved to another person.

(12) "Fiduciary" means:

(A) A trustee, conservator, guardian, agent under any agency agreement or other instrument, an executor, personal representative or administrator of a decedent's estate, or any other party, including a trust advisor or a trust protector, who is acting in a fiduciary capacity for any person, trust, or estate;

(B) For purposes of subparagraph (A), an agency agreement includes, but is not limited to, any agreement under

which any delegation is made, either pursuant to Section 91-8-807 or by anyone holding a power or duty pursuant to Article 12;

(C) For purposes of the definition of fiduciary in Section 91-8-103, fiduciary does not mean any person who is an excluded fiduciary as such is defined in Section 91-8-103.

(13) "Guardian" means a person appointed by the court pursuant to Section 93-13-13 or a parent to make decisions regarding the support, care, education, health, and welfare of a minor or adult individual. The term does not include a guardian ad litem.

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

(15) "Internal Revenue Code" means the Internal Revenue Code of 1986, as in effect on July 1, 2014, or as later amended.

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

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

(18) "Power of appointment" means:

(A) An inter vivos or testamentary power to direct the disposition of trust property, other than a distribution decision made by a trustee or other fiduciary to a beneficiary;

(B) Powers of appointment are held by the person to whom such power has been given, and not by a settlor in that person's capacity as settlor.

(19) "Power of withdrawal" means a presently exercisable general power of appointment other than a power: (A) exercisable by a trustee and limited by an ascertainable standard; or (B) exercisable by another person only upon consent of the trustee or a person holding an adverse interest.

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

(21) "Qualified beneficiary" means a beneficiary who, on the date the beneficiary's qualification is determined:

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

(B) Would be a distributee or permissible distributee of trust income or principal if the interests of the distributees described in subparagraph (A) terminated on that date without causing the trust to terminate; or

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

(22) "Remainder interest" means an interest under which a trust beneficiary will receive property held by a trust outright at some time during the future.

(23) "Reserved power" means a power held by a settlor.

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

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

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

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

(28) "Successors in interest" means the beneficiaries under the settlor's will, if the settlor has a will, or in the absence of an effective will provision, the settlor's heirs at law.

(29) "Terms of a trust" means the manifestation of the settlor's intent regarding a trust's provisions as expressed in

the trust instrument or as may be established by other evidence that would be admissible in a judicial proceeding.

(30) "Trust advisor" means any person described in Section 91-8-1201(a).

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

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

(33) "Trust protector" means any person described in Section 91-8-1201(a).

SECTION 4. The following shall be codified as Section 91-8-104, Mississippi Code of 1972:

91-8-104. **Knowledge.** (a) Subject to subsection (b), a person has knowledge of a fact if the person:

- (1) Has actual knowledge of it;
- (2) Has received a notice or notification of it; or
- (3) From all the facts and circumstances known to the person at the time in question, has reason to know it.

(b) An organization that conducts activities through employees has notice or knowledge of a fact involving a trust only from the time the information was received by an employee having responsibility to act for the trust, or would have been brought to the employee's attention if the organization had exercised reasonable diligence. An organization exercises reasonable

diligence if it maintains reasonable routines for communicating significant information to the employee having responsibility to act for the trust and there is reasonable compliance with the routines. Reasonable diligence does not require an employee of the organization to communicate information unless the communication is part of the individual's regular duties or the individual knows a matter involving the trust would be materially affected by the information.

SECTION 5. The following shall be codified as Section 91-8-105, Mississippi Code of 1972:

91-8-105. **Default and mandatory rules.** (a) Except as otherwise provided in the terms of the trust, this chapter governs the duties and powers of a trustee or any other fiduciary under this chapter, relations among trustees and such other fiduciaries, and the rights and interests of a beneficiary. The terms of a trust may expand, restrict, eliminate, or otherwise vary the duties and powers of a trustee, any such other fiduciary, relations among any of them, and the rights and interests of a beneficiary; however, nothing contained in this subsection shall be construed to override or nullify the provisions of subsection (b). The rule of statutory construction that statutes in derogation of the common law are to be strictly construed shall have no application to this section. Except as restricted by subsection (b), pursuant to this section, courts shall give

maximum effect to the principal of freedom of disposition and to the enforceability of trust instruments.

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

(1) The requirements for creating a trust;

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

(3) The requirement that a trust and its terms be for the benefit of its beneficiaries as the interests of such beneficiaries are defined under the terms of the trust, and that the trust have a purpose that is lawful and possible to achieve;

(4) The power of the court to modify or terminate a trust under Sections 91-8-410 through 91-8-416;

(5) The effect of a spendthrift provision and the rights of certain creditors and assignees to reach a trust as provided in the Family Trust Preservation Act, Section 91-9-501 et seq.;

(6) The power of the court under Section 91-8-702 to require, dispense with, or modify or terminate a bond;

(7) The power of the court under Section 91-8-708(b) to adjust a trustee's compensation specified in the terms of the trust which is unreasonably low or high;

(8) Subject to subsection (d), the duty under Section 91-8-813(b) to notify beneficiaries of an irrevocable trust

(including anyone who holds of a power of appointment) who have attained twenty-five (25) years of age that the trust has been established as set forth in that Section 91-8-813(b);

(9) Subject to subsection (d), the duty under Section 91-8-813(a)(1) and (2) to keep the beneficiaries (including anyone who holds a power of appointment) informed and to respond to the request of a beneficiary of an irrevocable trust for trustee's reports and other information reasonably related to the administration of the trust;

(10) The effect of an exculpatory term under Section 91-8-1008;

(11) The rights under Sections 91-8-1010 through 91-8-1013 of a person other than a trustee or beneficiary;

(12) Periods of limitation for commencing a judicial proceeding;

(13) The power of the court to take such action and exercise such jurisdiction as may be necessary in the interests of justice; and

(14) The subject-matter jurisdiction of the court and venue for commencing a proceeding as provided in Sections 91-8-203 and 91-8-204.

(c) Any purpose enunciated as a material purpose of a trust in that trust's trust instrument shall be treated as a material purpose of that trust for all purposes of this chapter.

(d) Notwithstanding subsection (b)(8) and (9) of this section, the duties of a trustee to give notice, information and reports under Section 91-8-813(a) and (b) may be waived or modified in the trust instrument or by the settlor of the trust, or a trust protector or trust advisor that holds the power to so direct, directs otherwise in a writing delivered to the trustee in any of the following ways:

(1) By waiving or modifying such duties as to all qualified beneficiaries during the lifetime of the settlor or the settlor's spouse;

(2) By specifying a different age at which a beneficiary or class of beneficiaries must be notified under Section 91-8-813(b); and

(3) With respect to one or more of the beneficiaries, by designating a beneficiary surrogate to receive such notice, information and reports who will act in good faith to protect the interests of the beneficiary or beneficiaries.

SECTION 6. The following shall be codified as Section 91-8-106, Mississippi Code of 1972:

91-8-106. **Common law of trusts; principles of equity.** The common law of trusts and principles of equity supplement this chapter, except to the extent modified by this chapter or another statute of this state.

SECTION 7. The following shall be codified as Section 91-8-107, Mississippi Code of 1972:

91-8-107. **Governing law.** (a) The validity, construction and administration of a trust are determined by the law of the jurisdiction designated in the terms of the trust instrument.

(b) In the absence of a controlling designation in the terms of the trust, the laws of the jurisdiction where the trust was executed determine the validity of the trust, construction of the trust instrument and the laws of descent, while the laws of the principal place of administration determine the administration of the trust.

SECTION 8. The following shall be codified as Section 91-8-108, Mississippi Code of 1972:

91-8-108. **Principal place of administration.** (a) Without precluding other means for establishing a sufficient connection with the designated jurisdiction, the terms of a trust designating the principal place of administration are valid and controlling if:

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

(2) All or part of the administration occurs in the designated jurisdiction; administration includes, but is not limited to:

(A) Maintenance of some trust records physically in the designated jurisdiction;

(B) Wholly or partly preparing or arranging for the preparation, either on an exclusive or a nonexclusive basis,

in the designated jurisdiction of an income tax return that must be filed for the trust; or

(3) Some or all of the trust assets are deposited in the designated jurisdiction or physical evidence of the assets is held in the designated jurisdiction and the trust is being administered by a person defined in subsection (a)(1). For purposes of this subsection (a)(3), "deposited in the designated jurisdiction," includes assets being held in any checking account, time deposit, certificate of deposit, brokerage account, trust company fiduciary account, or other similar account or deposit that is located in the designated jurisdiction.

(b) Except as otherwise expressly provided by the terms of a governing instrument specifically addressing the governing law for trust administration or by court order, the laws of this state shall govern the administration of a trust while the trust is administered in this state. Without precluding other means for establishing that a trust is administered in this state, if any of the activities described in subsection (a) occur in this state, the trust is administered in this state.

(c) A trustee shall administer the trust at a place appropriate to its purposes, its administration, and the interests of the beneficiaries; however, a trustee shall not be required, in the absence of a court order, to transfer the trust's principal place of administration to another state or to a jurisdiction outside the United States even though such other state or

jurisdiction outside the United States could also be appropriate to its purposes, its administration, and the interests of the beneficiaries.

(d) Without precluding the right of the court to order, approve, or disapprove a transfer, the trustee may transfer the trust's principal place of administration to another state or to a jurisdiction outside the United States, if the transfer is to a place appropriate to the trust's purposes, its administration, and the interests of the beneficiaries.

(e) The trustee shall notify the qualified beneficiaries of a proposed transfer of a trust's principal place of administration to another state or to a jurisdiction outside the United States not less than sixty (60) days before initiating the transfer. The notice of proposed transfer must include:

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

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

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

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

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

(f) The authority of a trustee under this section to transfer a trust's principal place of administration terminates if a majority of the qualified beneficiaries described in Section 91-8-103 notify the trustee of an objection to the proposed transfer on or before the date specified in the notice.

(g) In connection with a transfer of the trust's principal place of administration, the trustee may transfer some or all of the trust property to a successor trustee designated in the terms of the trust or appointed pursuant to Section 91-8-704.

SECTION 9. The following shall be codified as Section 91-8-109, Mississippi Code of 1972:

91-8-109. **Methods and waiver of notice.** (a) Notice to a person under this chapter or the sending of a document to a person under this chapter must be accomplished in a manner reasonably suitable under the circumstances and likely to result in receipt of the notice or document. Permissible methods of notice or for sending a document include first-class mail, personal delivery, delivery to the person's last-known place of residence or place of business, or a properly directed electronic message.

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

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

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

SECTION 10. The following shall be codified as Section 91-8-110, Mississippi Code of 1972:

91-8-110. **Others treated as qualified beneficiaries.** A charitable organization expressly designated to receive distributions under the terms of a charitable trust has the rights of a qualified beneficiary under this chapter if the charitable organization, on the date the charitable organization's qualification is being determined:

(1) Is a distributee or permissible distributee of trust income or principal;

(2) Would be a distributee or permissible distributee of trust income or principal if the interests of other distributees or permissible distributees then receiving or eligible to receive distributions terminated on that date without causing the trust to terminate; or

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

SECTION 11. The following shall be codified as Section 91-8-111, Mississippi Code of 1972:

91-8-111. **Nonjudicial settlement agreements.** (a) Except as otherwise provided in subsection (b), the trustee and qualified beneficiaries may enter into a binding nonjudicial settlement agreement with respect to any matter involving a trust.

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

(c) Matters that may be resolved by a nonjudicial settlement agreement include:

- (1) The interpretation or construction of the terms of the trust;
- (2) The approval of a trustee's report or accounting;
- (3) Direction to a trustee to refrain from performing a particular act or the grant to a trustee of any necessary or desirable power;
- (4) The resignation or appointment of a trustee and the determination of a trustee's compensation;
- (5) Transfer of a trust's principal place of administration;
- (6) Liability of a trustee for an action relating to the trust;
- (7) The extent or waiver of bond of a trustee;
- (8) The governing law of the trust; and

(9) The criteria for distribution to a beneficiary where the trustee is given discretion.

(d) Any qualified beneficiary or trustee may request the court to approve a nonjudicial settlement agreement, to determine whether the representation as provided in Article 3 was adequate, and to determine whether the agreement contains terms and conditions the court could have properly approved.

SECTION 12. The following shall be codified as Section 91-8-112, Mississippi Code of 1972:

91-8-112. **Rules of construction.** The rules of construction that apply in this state to the interpretation of and disposition of property by will also apply as appropriate to the interpretation of the terms of a trust and the disposition of the trust property.

ARTICLE 2

JUDICIAL PROCEEDINGS

SECTION 13. The following shall be codified as Section 91-8-201, Mississippi Code of 1972:

91-8-201. **Role of court in administration of trust.** (a)
The court may intervene in the administration of a trust to the extent its jurisdiction is invoked by an interested person or as provided by law.

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

(c) A judicial proceeding involving a trust may relate to any matter involving the trust's administration, including, but not limited to, a proceeding to:

- (1) Request instructions;
- (2) Determine the existence or nonexistence of any immunity, power, privilege, duty or right;
- (3) Approve a nonjudicial settlement;
- (4) Interpret or construe the terms of the trust;
- (5) Determine the validity of a trust or of any of its terms;
- (6) Approve a trustee's report or accounting or compel a trustee to report or account;
- (7) Direct a trustee to refrain from performing a particular act or grant to a trustee any necessary or desirable power;
- (8) Review the actions or approve the proposed actions of a trustee, including the exercise of a discretionary power;
- (9) Accept the resignation of a trustee;
- (10) Appoint or remove a trustee;
- (11) Determine a trustee's compensation;
- (12) Transfer a trust's principal place of administration or a trust's property to another jurisdiction;
- (13) Determine the liability of a trustee for an action relating to the trust and compel redress of a breach of trust by any available remedy;

- (14) Modify or terminate a trust;
- (15) Combine trusts or divide a trust;
- (16) Determine liability of a trust for debts of a beneficiary and living settlor;
- (17) Determine liability of a trust for debts, expenses of administration, and statutory allowances chargeable against the estate of a deceased settlor;

(18) Determine the liability of a trust for claims, expenses and taxes in connection with the settlement of a trust that was revocable at the settlor's death; and

(19) Ascertain beneficiaries and determine to whom property will pass upon final or partial termination of a trust.

SECTION 14. The following shall be codified as Section 91-8-202, Mississippi Code of 1972:

91-8-202. **Jurisdiction over trustee and beneficiary.** (a) By accepting the trusteeship of a trust having its principal place of administration in this state or by moving the principal place of administration to this state, the trustee submits personally to the jurisdiction of the courts of this state regarding any matter involving the trust.

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

submits personally to the jurisdiction of the courts of this state regarding any matter involving the trust.

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

SECTION 15. The following shall be codified as Section 91-8-203, Mississippi Code of 1972:

91-8-203. **Subject-matter jurisdiction.** (a) Except as provided in subsections (b) and (c), the chancery court has exclusive jurisdiction of proceedings in this state brought by a trustee or beneficiary concerning the administration of a trust.

(b) Any other court granted statutory equitable jurisdiction has concurrent jurisdiction with the chancery court in any proceedings in this state brought by a trustee or beneficiary concerning the administration of a trust.

(c) The chancery court has concurrent jurisdiction with other courts of this state in other proceedings involving a trust.

SECTION 16. The following shall be codified as Section 91-8-204, Mississippi Code of 1972:

91-8-204. **Venue.** (a) Except as otherwise provided in subsection (b), venue for a judicial proceeding involving a trust is in the county of this state in which the trust's principal place of administration is or will be located and, if the trust is created by will and the estate is not yet closed, in the county in which the decedent's estate is being administered.

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

SECTION 17. The following shall be codified as Section 91-8-205, Mississippi Code of 1972:

91-8-205. **Judicial accountings and settlements.** (a) A trustee may file an accounting of the trustee's administration of a trust in court at any time and seek a partial or final settlement thereof or, upon petition of an interested party, a court may order a trustee to render an accounting of the trustee's administration of a trust and require a partial or final settlement thereof. Notice of such judicial proceeding shall be provided to the trustee and each beneficiary, or representative thereof pursuant to Article 3, as provided by the applicable rules of civil procedure.

(b) A trust accounting must be a reasonably understandable report from the date of the last accounting or, if none, from the date upon which the trustee became accountable, or other such date the court may set, which provides reasonable detail of the transactions affecting the administration of the trust, and which adequately discloses the following information:

(1) The accounting must identify the trust, the trustee furnishing the accounting, and the time period covered by the accounting.

(2) The accounting must show all receipts and disbursements occurring during the accounting period. Gains and losses realized during the accounting period must also be shown.

(3) The accounting, to the extent feasible, must identify and value trust assets on hand at the close of the accounting period. For each asset or class of assets reasonably capable of valuation, the accounting shall contain two (2) values, (A) the asset acquisition value or carrying value, and (B) the estimated current value, if feasible. The accounting must identify each known noncontingent liability with an estimated current amount of the liability if known.

(4) To the extent feasible, the accounting must show the significant noncash transactions affecting the assets of the trust, including name changes in investment holdings, adjustments to carrying value, or stock splits.

(5) The accounting must reflect the allocation of receipts and disbursements between income and principal when the allocation affects the interest of any beneficiary of the trust.

(c) Any order or judgment of the court on such accounting and partial or final settlement shall be final and conclusive as to all matters occurring during the accounting period, and appeals

therefrom shall and must be taken in the manner provided for from any other final judgment of the court.

ARTICLE 3

REPRESENTATION

SECTION 18. The following shall be codified as Section 91-8-301, Mississippi Code of 1972:

91-8-301. **Representation: basic effect.** (a) Notice to a person who may represent and bind another person under this article has the same effect as if notice were given directly to the other person.

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

(c) Except as otherwise provided in Sections 91-8-411 and 91-8-602, a person who under this article may represent a settlor who lacks capacity may receive notice and give a binding consent on the settlor's behalf.

(d) A settlor may not represent and bind a beneficiary under this article with respect to the termination or modification of a trust under Section 91-8-411(a).

SECTION 19. The following shall be codified as Section 91-8-302, Mississippi Code of 1972:

91-8-302. **Representation by holder of power of appointment.**

To the extent there is no material conflict of interest between the holder of a power of appointment and the persons represented with respect to the particular question or dispute, the holder may represent and bind persons whose interests, as permissible appointees, takers in default, or otherwise, are subject to the power.

SECTION 20. The following shall be codified as Section 91-8-303, Mississippi Code of 1972:

91-8-303. **Representation by fiduciaries and parents.** To the extent there is no material conflict of interest between the representative and the person represented or among those being represented with respect to a particular question or dispute:

- (1) A conservator or guardian may represent and bind the estate that the conservator or guardian controls;
- (2) A conservator or guardian may represent and bind the ward if a conservator or guardian of the ward's estate has not been appointed;
- (3) An agent having authority to act with respect to the particular question or dispute may represent and bind the principal;
- (4) A trustee may represent and bind the beneficiaries of the trust;
- (5) A personal representative of a decedent's estate may represent and bind persons interested in the estate;

(6) A parent may represent and bind the person's minor or unborn child if a conservator or guardian for the descendant has not been appointed;

(7) A grandparent may represent the grandparent's grandchild if that grandchild is not already represented by a parent under paragraph (6); and

(8) A person designated by the settlor in the trust instrument or in a writing delivered to the trustee to represent the beneficiaries of the trust may represent and bind such beneficiaries.

SECTION 21. The following shall be codified as Section 91-8-304, Mississippi Code of 1972:

91-8-304. **Representation by person having substantially identical interest.** (a) Unless otherwise represented, a minor, incapacitated, or unborn individual, or a person whose identity or location is unknown and not reasonably ascertainable, may be represented by and bound by another having a substantially identical interest with respect to the particular question or dispute, but only to the extent there is no material conflict of interest between the representative and the person represented.

(b) Unless otherwise represented, whenever survivorship of another person is an express or implied condition of receiving property from a trust, the successor contingent remainder beneficiary may be represented and bound by the presumptive remainder beneficiary upon whose death the rights of the successor

contingent remainder beneficiary depend, but only to the extent there is no material conflict of interest between the presumptive remainder beneficiary and the successor contingent remainder beneficiary.

SECTION 22. The following shall be codified as Section 91-8-305, Mississippi Code of 1972:

91-8-305. **Appointment of representative.** (a) If the court determines that an interest is not represented under this article, or that the otherwise available representation might be inadequate, the court may appoint a guardian ad litem or other representative to receive notice, give consent, and otherwise represent, bind, and act on behalf of a minor, incapacitated, or unborn individual, or a person whose identity or location is unknown. A guardian ad litem or other representative may be appointed to represent several persons or interests.

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

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

ARTICLE 4

CREATION, VALIDITY, MODIFICATION, AND TERMINATION OF TRUST

SECTION 23. The following shall be codified as Section 91-8-401, Mississippi Code of 1972:

91-8-401. **Methods of creating trust.** A trust may be created by:

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

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

(3) Exercise of a power of appointment in favor of a trustee; or

(4) A court pursuant to its statutory or equitable powers; or

(5) (A) By an agent or attorney-in-fact under a power of attorney that expressly grants authority to create the trust; or

(B) By an agent or attorney-in-fact under a power of attorney that grants the agent or attorney-in-fact the authority to act in the management and disposition of the principal's property that is as broad or comprehensive as the principal could exercise for himself or herself and that does not expressly exclude the authority to create a trust. An agent or attorney-in-fact may file a petition for the court to determine whether a power of attorney described in this section grants the agent or attorney-in-fact authority that is as broad or

comprehensive as that which the principal could exercise for himself or herself.

SECTION 24. The following shall be codified as Section 91-8-402, Mississippi Code of 1972:

91-8-402. **Requirements for creation.** (a) A trust is created only if:

- (1) The settlor has capacity to create a trust;
- (2) The settlor indicates an intention to create the trust;
- (3) The trust has a definite beneficiary or is:
 - (A) A charitable trust;
 - (B) A trust for the care of an animal, as provided in Section 91-8-408; or
 - (C) A trust for a noncharitable purpose, as provided in Section 91-8-409;
- (4) The trustee has duties to perform; and
- (5) The same person is not the sole trustee and sole beneficiary.

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

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

power passes to the persons who would have taken the property had the power not been conferred.

(d) A settlor is deemed to have the capacity to create a trust if:

(1) The trust is created by an agent of the settlor under a power of attorney as described in Section 91-8-401(5); and

(2) The settlor had capacity to create a trust at the time the power of attorney was executed.

SECTION 25. The following shall be codified as Section 91-8-403, Mississippi Code of 1972:

91-8-403. **Trusts created in other jurisdictions.** A trust not created by will is validly created if its creation complies with the law of the jurisdiction in which the trust instrument was executed, or the law of the jurisdiction in which, at the time of creation:

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

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

(3) Any trust property was located.

SECTION 26. The following shall be codified as Section 91-8-404, Mississippi Code of 1972:

91-8-404. **Trust purposes.** A trust may be created only to the extent its purposes are lawful and possible to achieve. A trust and its terms must be for the benefit of its beneficiaries

as the interests of such beneficiaries are defined under the terms of the trust.

SECTION 27. The following shall be codified as Section 91-8-405, Mississippi Code of 1972:

91-8-405. **Charitable purposes; enforcement.** (a) A charitable trust may be created for the relief of poverty, the advancement of education or religion, the promotion of health, governmental or municipal purposes, or other purposes the achievement of which is beneficial to the community.

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

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

SECTION 28. The following shall be codified as Section 91-8-406, Mississippi Code of 1972:

91-8-406. **Creation of trust induced by fraud, duress, or undue influence.** A trust is void to the extent its creation was induced by fraud, duress, or undue influence.

SECTION 29. The following shall be codified as Section 91-8-407, Mississippi Code of 1972:

91-8-407. **Evidence of oral trust; trust in land.** (a)
Except as provided in subsection (b) and except as required by a

statute other than this chapter, a trust need not be evidenced by a trust instrument, but the creation of an oral trust and its terms may be established only by clear and convincing evidence.

(b) (1) No trust of or in any real property can be created except by a written instrument signed by the party who declares or creates such trust (the "settlor"), or by his last will, in writing. Every writing declaring or creating a trust in real property, other than a last will, may be acknowledged and proved as other writing and filed for record with the clerk of the chancery court in which the real property, or part of it, is located, and the filing shall serve as constructive notice of the existence and terms of the trust from and after filing.

(2) In lieu of filing the trust instrument, there may be filed a memorandum of trust signed by the settlor, trustee, or successor trustee and acknowledged or proved as other writings, which memorandum shall contain the following information:

(A) The name of the trust;

(B) The street and mailing address of the office, and the name and street and mailing address and telephone number of the trustee;

(C) The name and street and mailing address and telephone number of the settlor of the trust;

(D) A legally sufficient description of all interests in real property owned by or conveyed to the trust;

(E) The anticipated date of termination of the trust or the event upon which the trust will be terminated; and

(F) The general powers granted to the trustee.

The memorandum may also contain the name and street and mailing address and telephone number of any successor trustee, and if so, no amendment to the memorandum will be required to be filed if and when the successor trustee so named assumes office. The memorandum of trust may be filed with the clerk of the appropriate chancery court either before or after a deed of conveyance of real property to the trust or trustee, in his capacity as such. The memorandum need not comply with subparagraph (D) if filed before or contemporaneously with a conveyance of any real property to the trust or trustee in his capacity as such, and need not be amended upon a subsequent conveyance of real property to the trust or trustee in his capacity as such, so long as the deed of conveyance is recorded in the appropriate county, and the recording of the deed of conveyance to the trust or trustee, as the case may be, shall constitute compliance with subparagraph (D). In addition, the deed of conveyance may also serve as a memorandum of trust, or an amendment to the memorandum of trust, as the case may be, so long as the deed of conveyance contains the information required for a memorandum of trust as set forth in this subsection (b).

(3) The settlor may amend the memorandum if the trust to which it relates is subject to a power of amendment or revocation by the settlor; otherwise, only the then-serving

trustee may amend the memorandum. The memorandum of amendment shall set forth the amendment to the original memorandum with particularity. The amended memorandum of trust may be made effective on a future date, which must be a date certain. The memorandum of amendment may be signed by the creator, trustee or successor trustee, as the case may be, and acknowledged or proved as other writings and filed for record with the clerk of the chancery court where the original memorandum is of record.

(4) The provision of Sections 89-5-24 and 89-5-33 shall apply to any trust instrument, memorandum, or amendment that is to be recorded under this subsection (b).

(5) The provisions of this subsection (b) shall have no application to trusts of personal property, nor to any trust arising or resulting by implication of law out of a conveyance of land. The failure to file a copy of the trust instrument, memorandum or deed of conveyance shall not affect the validity of the trust or the trust instrument.

SECTION 30. The following shall be codified as Section 91-8-408, Mississippi Code of 1972:

91-8-408. **Trust for care of animal.** (a) A trust may be created to provide for the care of an animal alive during the settlor's lifetime. The trust terminates upon the death of the animal or, if the trust was created to provide for the care of more than one (1) animal alive during the settlor's lifetime, upon the death of the last surviving animal.

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

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

SECTION 31. The following shall be codified as Section 91-8-409, Mississippi Code of 1972:

91-8-409. **Noncharitable trust without ascertainable beneficiary.** Except as otherwise provided in Section 91-8-408, Section 41-43-51 or by another statute, the following rules apply:

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

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

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

SECTION 32. The following shall be codified as Section 91-8-410, Mississippi Code of 1972:

91-8-410. **Modification or termination of trust; proceedings for approval or disapproval.** (a) In addition to the methods of termination prescribed by Sections 91-8-411 through 91-8-414, a trust terminates to the extent the trust is revoked or expires pursuant to its terms, no purpose of the trust remains to be achieved, or the purposes of the trust have become unlawful or impossible to achieve.

(b) A proceeding to approve or disapprove a proposed modification or termination under Sections 91-8-411 through 91-8-416, or trust combination or division under Section 91-8-417, may be commenced by a trustee or beneficiary. The settlor of a charitable trust may maintain a proceeding to modify the trust under Section 91-8-413.

(c) Nothing in this section or this chapter is intended to create or imply a duty for a trustee to make or seek approval of a modification, termination, combination or division, and a trustee is not liable for not making or seeking approval of a modification, termination, combination or division.

SECTION 33. The following shall be codified as Section 91-8-411, Mississippi Code of 1972:

91-8-411. **Modification or termination of noncharitable irrevocable trust by consent.** (a) During the settlor's lifetime, a noncharitable irrevocable trust may be modified or terminated by the trustee upon consent of all qualified beneficiaries, even if the modification or termination is inconsistent with a material purpose of the trust if the settlor does not object to the proposed modification or termination. The trustee shall notify the settlor of the proposed modification or termination not less than sixty (60) days before initiating the modification or termination. The notice of modification or termination must include:

(1) An explanation of the reasons for the proposed modification or termination;

(2) The date on which the proposed modification or termination is anticipated to occur; and

(3) The date, not less than sixty (60) days after the giving of notice, by which the settlor must notify the trustee of an objection to the proposed modification or termination.

(b) Following the settlor's death, a noncharitable irrevocable trust may be terminated upon consent of all of the beneficiaries if the court concludes that continuance of the trust is not necessary to achieve any material purpose of the trust. A noncharitable irrevocable trust may be modified upon consent of all of the beneficiaries if the court concludes that modification is not inconsistent with a material purpose of the trust.

(c) Upon termination of a trust under subsection (a) or (b), the trustee shall distribute the trust property as agreed by the qualified beneficiaries.

(d) If not all of the qualified beneficiaries consent to a proposed modification or termination of the trust under subsection (a) or (b), the modification or termination may be approved by the court if the court is satisfied that:

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

(2) The interests of a qualified beneficiary who does not consent will be adequately protected.

(e) Solely for purposes of this section, the term "noncharitable irrevocable trust" refers to a trust that is not revocable by the settlor with respect to which:

(1) No federal or state income, gift, estate or inheritance tax charitable deduction was allowed upon transfers to the trust; and

(2) The value of all interests in the trust owned by charitable organizations does not exceed five percent (5%) of the value of the trust.

(f) Notwithstanding subsection (a), the trustee may seek court approval of a modification or termination.

SECTION 34. The following shall be codified as Section 91-8-412, Mississippi Code of 1972:

91-8-412. **Modification or termination because of unanticipated circumstances or inability to administer trust effectively.** (a) The court may modify the administrative or dispositive terms of a trust or terminate the trust if, because of circumstances not anticipated by the settlor, modification or termination will further the purposes of the trust. To the extent practicable, the modification must be made in accordance with the settlor's probable intention.

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

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

SECTION 35. The following shall be codified as Section 91-8-413, Mississippi Code of 1972:

91-8-413. **Cy pres.** (a) Except as otherwise provided in subsection (b), if a particular charitable purpose becomes

unlawful, impracticable, impossible to achieve, obsolete or ineffective:

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

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

(3) The court may apply cy pres to modify or terminate the trust by directing that the trust property be applied or distributed, in whole or in part, in a manner that fulfills as nearly as possible the settlor's charitable intent and purposes.

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

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

(2) Fewer than twenty-one (21) years have elapsed since the date of the trust's creation.

SECTION 36. The following shall be codified as Section 91-8-414, Mississippi Code of 1972:

91-8-414. **Modification or termination of uneconomic trust.**

(a) After notice to the qualified beneficiaries, the trustee of a trust consisting of trust property having a total value less than One Hundred Fifty Thousand Dollars (\$150,000.00) may terminate the

trust if the trustee concludes that the value of the trust property is insufficient to justify the cost of administration.

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

(c) Upon termination of a trust under this section, the trustee shall distribute the trust property to or for the benefit of the beneficiaries, in such shares as the trustee, or the court in a court proceeding, determines, after taking into account the interests of income and remainder beneficiaries so as to conform as nearly as possible to the intention of the settlor, but a trust that qualified for the marital deduction for tax purposes shall only be distributed to the spouse of the settlor for whom the trust was created.

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

(e) This section shall not limit the right of a trustee, acting alone, to terminate a trust in accordance with applicable provisions of the governing instrument.

SECTION 37. The following shall be codified as Section 91-8-415, Mississippi Code of 1972:

91-8-415. **Reformation to correct mistakes.** The court may reform the terms of a trust, even if unambiguous, to conform the terms to the settlor's intention if it is proved by clear and

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

SECTION 38. The following shall be codified as Section 91-8-416, Mississippi Code of 1972:

91-8-416. **Modification to achieve settlor's tax objectives.** To achieve the settlor's tax objectives, the court may modify the terms of a trust in a manner that is not contrary to the settlor's probable intention. The court may provide that the modification has retroactive effect.

SECTION 39. The following shall be codified as Section 91-8-417, Mississippi Code of 1972:

91-8-417. **Combination and division of trusts.** (a) After notice to the qualified beneficiaries, a trustee may combine two (2) or more trusts into a single trust or divide a trust into two (2) or more separate trusts, if the result does not impair the rights of any beneficiary or adversely affect achievement of the purposes of the trust. In addition to any other combination or division the result of which does not impair the rights of any beneficiary or adversely affect achievement of the purposes of the trust, a combination or division pursuant to subsection (d) of this section shall not be considered as impairing the rights of any beneficiary or adversely affecting the achievement of the purposes of the trust. If the trusts to be combined or divided have different trustees, the trustees may negotiate the terms of

the combined or divided trusts, including which trusts will be the surviving trust or trusts, who will be the trustee or trustees of the surviving trust or trusts and any other matter relating to the operation of the surviving trust or trusts.

(b) In addition to combining two (2) or more trusts into a single trust or dividing a trust into two (2) or more separate trusts, a trustee, after notice to the qualified beneficiaries, may segregate by allocation to a separate account or trust a specific amount from, a portion of, or a specific asset included in the trust property of any trust to reflect a disclaimer, to reflect or result in differences in federal tax attributes, to satisfy any federal tax requirement, to make federal tax elections, to reduce potential generation-skipping transfer tax liability, or for any other tax planning purposes or other reasons.

(c) A separate trust created by severance or segregation must be treated as a separate trust for all purposes from the effective date in which the severance or segregation is effective. The effective date of the severance or segregation may be retroactive. In managing, investing, administering, and distributing the trust property of any separate account or trust and in making applicable tax elections, the trustee may consider the differences in federal tax attributes and all other factors the trustee believes pertinent and may make disproportionate distributions from the separate trusts or accounts created.

(d) A trust or account created by consolidation, severance, or segregation under this section shall not be considered as impairing the rights of a beneficiary if the trust is held on terms and conditions that are substantially equivalent to the terms of the trust before consolidation, severance, or segregation so that the aggregate interests of each beneficiary are substantially equivalent to the beneficiary's interests in the trust or trusts before consolidation, severance, or segregation. In determining whether a beneficiary's aggregate interests are substantially equivalent, the trustee shall consider the economic value of those interests to the extent they can be valued, considering actuarial factors as appropriate. If a beneficiary's interest cannot be valued with any reasonable degree of certainty because of the nature of the trust property, the terms of the trust, or other reasons, the trustee shall base the determination upon such other factors as are reasonable and appropriate under the facts and circumstances applicable to that particular trust, including the purposes of the trust. However, the terms of any trust before consolidation, severance or segregation which permit qualification of that trust for an applicable federal tax deduction, exclusion, election, exemption, or other special federal tax status must remain identical in the consolidated trust or in each of the separate trusts or accounts created by severance or segregation.

(e) A trustee who acts in good faith is not liable to any person for taking into consideration differences in federal tax attributes and other pertinent factors in administering trust property of any separate account or trust, in making tax elections, and making distributions pursuant to the terms of the separate trust.

(f) Income earned on a consolidated or severed or segregated amount, portion, or specific asset after the consolidation or severance is effective passes with that amount, portion or specific asset.

(g) This section applies to all trusts whenever created, whether before, on, or after July 1, 2014, and whether the trusts are inter vivos or testamentary, are created by the same or different instruments, by the same or different persons and without regard to where created or administered.

(h) This section does not limit the right of a trustee acting in accordance with the applicable provisions of the governing instrument to divide or consolidate trusts.

(i) Nothing contained in this section shall be construed as granting to any trustee a general power of appointment over any trust not otherwise expressly granted in the trust instrument.

ARTICLE 5

CREDITOR'S CLAIMS; SPENDTHRIFT AND DISCRETIONARY TRUSTS

[Reserved]

ARTICLE 6

REVOCABLE TRUSTS

SECTION 40. The following shall be codified as Section 91-8-601, Mississippi Code of 1972:

91-8-601. **Capacity of settlor of revocable trust.** The capacity required to create, amend, revoke, or add property to a revocable trust, or to direct the actions of the trustee of a revocable trust, is the same as that required to make a will. To be effective as a post-death disposition of property transferred during the transferor's life or by the transferor's will to a trust of which the transferor is the settlor or deemed to be the settlor, neither a revocable nor an irrevocable trust existing on or executed after July 1, 2014, has to be executed with the formalities of a will.

SECTION 41. The following shall be codified as Section 91-8-602, Mississippi Code of 1972:

91-8-602. **Revocation or amendment of revocable trust.** (a) Unless the terms of a trust expressly provide that the trust is irrevocable, the settlor may revoke or amend the trust. This subsection (a) does not apply to a trust created under an instrument executed before the effective date of this chapter.

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

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

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

(3) At the death of one (1) settlor, each surviving settlor shall have the right to revoke the trust as to the surviving settlor's portion of the trust as determined by the type of property in accordance with subsection (b)(1) or (2); and

(4) Upon the revocation or amendment of the trust by fewer than all of the settlors or upon the death of one (1) of the settlors, the trustee shall promptly notify the other settlors of the revocation, amendment or death.

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

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

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

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

(B) Any other method manifesting clear and convincing evidence of the settlor's intent; however, a written revocable trust may only be amended and revoked by a later written instrument delivered to the trustee.

(d) Upon revocation of a revocable trust, the trustee shall deliver the trust property as the settlor directs. However, with respect to community property under subsection (b)(1), the trustee shall deliver the property one-half (1/2) to each spouse unless the trust instrument specifically states otherwise.

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

(f) A conservator or guardian of the settlor may exercise a settlor's powers with respect to revocation, amendment, or distribution of trust property only with the approval of the court supervising the conservatorship or guardianship.

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

SECTION 42. The following shall be codified as Section 91-8-603, Mississippi Code of 1972:

91-8-603. **Settlor's powers; powers of withdrawal.** (a)
While a trust is revocable rights of the beneficiaries are subject to the control of, and the duties of the trustee are owed exclusively to, the settlor.

(b) If a revocable trust has more than one (1) settlor, the duties of the trustee are owed to all of the settlors having capacity to revoke the trust.

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

SECTION 43. The following shall be codified as Section 91-8-604, Mississippi Code of 1972:

91-8-604. **Limitation on action contesting validity of revocable trust; distribution of trust property.** (a) A person may commence a judicial proceeding to contest the validity of all or part of the terms of a trust that was revocable at the settlor's death within the earlier of:

- (1) Two (2) years after the settlor's death; or
- (2) One hundred and twenty (120) days after the trustee sent the person a copy of the trust instrument and a notice informing the person of the trust's existence, of the trustee's name and address, and of the time allowed for commencing a proceeding.

(b) Upon the death of the settlor of a trust that was revocable at the settlor's death, the trustee may proceed to distribute the trust property in accordance with the terms of the trust. The trustee is subject to liability for doing so only if:

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

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

(c) A beneficiary of a trust that is determined by a court proceeding to be invalid, in whole or in part, is liable to return to the court any distribution received for proper distribution to the extent that the invalidity applies to the distribution. If the beneficiary refuses to return the distribution after being ordered by the court, the beneficiary shall be liable for all costs incurred for recovery of the distribution.

ARTICLE 7

OFFICE OF TRUSTEE

SECTION 44. The following shall be codified as Section 91-8-701, Mississippi Code of 1972:

91-8-701. **Accepting or declining trusteeship.** (a) Except as otherwise provided in subsection (c), a person designated as trustee accepts the trusteeship:

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

(2) If the terms of the trust do not provide a method or the method provided in the terms is not expressly made

exclusive, by accepting delivery of the trust property, exercising powers or performing duties as trustee, or otherwise indicating acceptance of the trusteeship.

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

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

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

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

SECTION 45. The following shall be codified as Section 91-8-702, Mississippi Code of 1972:

91-8-702. **Trustee's bond.** (a) A trustee shall give bond to secure performance of the trustee's duties only if the court finds that a bond is needed to protect the interests of the beneficiaries or is required by the terms of the trust and the court has not dispensed with the requirement.

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

(c) A state or national bank, savings institution, or trust company authorized to exercise fiduciary powers and regulated by the Office of the Comptroller of the Currency, Office of Thrift Supervision, the Mississippi Department of Banking and Consumer Finance, or equivalent state banking supervisors need not give bond, even if required by the terms of the trust.

SECTION 46. The following shall be codified as Section 91-8-703, Mississippi Code of 1972:

91-8-703. **Cotrustees.** (a) Cotrustees who are unable to reach a unanimous decision after consultation among all the cotrustees may act by majority decision.

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

(c) A cotrustee must participate in the performance of a trustee's function and consult with the other cotrustees unless the cotrustee is unavailable to perform the function because of absence, illness, disqualification under other law, or other temporary incapacity or the cotrustee has properly delegated the performance of the function to another trustee.

(d) If a cotrustee is unavailable to perform duties because of absence, illness, disqualification under other law, or other temporary incapacity, and prompt action is necessary to achieve

the purposes of the trust or to avoid injury to the trust property, the remaining cotrustee or a majority of the remaining cotrustees may act for the trust.

(e) A trustee may delegate to a cotrustee the performance of a function other than a function that the terms of the trust instrument expressly require the trustees to perform jointly. Unless a delegation was irrevocable, a trustee may revoke a delegation previously made.

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

(g) Each trustee shall exercise reasonable care to:

(1) Prevent a cotrustee from committing a serious breach of trust; and

(2) Compel a cotrustee to redress a serious breach of trust.

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

(i) A trustee shall keep each cotrustee and any other fiduciary reasonably informed about the administration of the trust, to the extent the trustee has knowledge that each such cotrustee or other fiduciary does not have knowledge of the

trustee's actions, or regarding other material information or the availability of such information, related to the administration of the trust that would be reasonably necessary for each cotrustee or other fiduciary to perform his or her duties as a trustee or other fiduciary of the trust.

SECTION 47. The following shall be codified as Section 91-8-704, Mississippi Code of 1972:

91-8-704. **Vacancy in trusteeship; appointment of successor.**

(a) A vacancy in a trusteeship occurs if:

- (1) A person designated as trustee rejects the trusteeship;
- (2) A person designated as trustee cannot be identified or does not exist;
- (3) A trustee resigns;
- (4) A trustee is disqualified or removed;
- (5) A trustee dies; or
- (6) A conservator or guardian is appointed for an individual serving as trustee.

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

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

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

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

(3) By a person appointed by the court.

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

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

(2) By a person selected by the unanimous agreement of the charitable organizations expressly designated to receive distributions under the terms of the trust if the Attorney General does not affirmatively object within thirty (30) days of receipt of notice of the person selected; or

(3) By a person appointed by the court.

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

SECTION 48. The following shall be codified as Section 91-8-705, Mississippi Code of 1972:

91-8-705. **Resignation of trustee.** (a) A trustee may resign:

(1) Upon at least thirty (30) days' notice to the qualified beneficiaries, the settlor, if living, and all cotrustees; or

(2) With the approval of the court.

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

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

SECTION 49. The following shall be codified as Section 91-8-706, Mississippi Code of 1972:

91-8-706. **Removal of trustee.** (a) The settlor, a cotrustee, or a beneficiary may request the court to remove a trustee, or a trustee may be removed by the court on its own initiative.

(b) The court may remove a trustee if:

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

(2) Lack of cooperation among cotrustees substantially impairs the administration of the trust;

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

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

(c) Pending a final decision on a request to remove a trustee, or in lieu of or in addition to removing a trustee, the court may order such appropriate relief under Section 91-8-1001(b) as may be necessary to protect the trust property or the interests of the beneficiaries.

SECTION 50. The following shall be codified as Section 91-8-707, Mississippi Code of 1972:

91-8-707. **Delivery of property by former trustee.** (a) Unless a cotrustee remains in office or the court otherwise orders, and until the trust property is delivered to a successor trustee or other person entitled to it, a trustee who has resigned or been removed has the duties of a trustee and the powers necessary to protect the trust property.

(b) A trustee who has resigned or been removed shall, within a reasonable time, deliver the trust property within the trustee's possession to the cotrustee, successor trustee, or other person entitled to it.

SECTION 51. The following shall be codified as Section 91-8-708, Mississippi Code of 1972:

91-8-708. **Compensation of trustee, trust advisor and trust protector.** (a) If the terms of a trust do not specify the trustee's, trust advisor's, or trust protector's compensation, and if the settlor, if living, or otherwise a majority of the qualified beneficiaries as defined in Section 91-8-103, have not otherwise agreed with the trustee, trust advisor, or trust protector, a trustee, trust advisor, or trust protector is entitled to compensation that is reasonable under the circumstances.

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

(1) The duties of the trustee, trust advisor, or trust protector are substantially different from those contemplated when the trust was created; or

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

(c) Factors for the court to consider in deciding upon a trustee's, trust advisor's, or trust protector's compensation shall include the size of the trust, the nature and number of the assets, the income produced, the time and responsibility required, the expertise required, any management or sale of real property or

closely held business interests, any involvement in litigation to protect trust property, and other relevant factors.

(d) Subject to the court's authority as provided in subsection (b), regardless of its form of entity, the fees set forth in the published fee schedule of a trustee, trust advisor, or trust protector that is regulated by the Mississippi Department of Banking and Consumer Finance, the equivalent regulatory agency of another state, the Office of the Comptroller of the Currency, or the Office of Thrift Supervision shall be presumed to be reasonable, unless otherwise provided by the terms of the trust.

SECTION 52. The following shall be codified as Section 91-8-709, Mississippi Code of 1972:

91-8-709. **Reimbursement of expenses.** (a) A trustee, trust advisor, or trust protector is entitled to be reimbursed out of the trust property, with interest as appropriate, for:

(1) Expenses that were properly incurred in the administration of the trust, including the defense or prosecution of any action, whether successful or not, unless the trustee is determined to have willfully or wantonly committed a material breach of trust; and

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

(b) An advance by the trustee, trust advisor, or trust protector or by a person named in Section 91-8-701(c)(1) of money

for the protection of the trust gives rise to a lien against trust property to secure reimbursement with reasonable interest.

SECTION 53. The following shall be codified as Section 91-8-710, Mississippi Code of 1972:

91-8-710. **Directed trusts.** If the terms of the trust require a trustee, trust advisor, or trust protector to follow the direction of a trust advisor or trust protector, and the trustee, trust advisor, or trust protector acts in accordance with the direction, then the trustee, trust advisor, or trust protector so directed shall be treated as an excluded fiduciary.

SECTION 54. The following shall be codified as Section 91-8-711, Mississippi Code of 1972:

91-8-711. **Directed trusts; accepting or declining fiduciary appointment.** (a) A trust advisor, trust protector, or other fiduciary other than a cotrustee, the cotrustee already being provided for in Section 91-8-701(a), may accept its appointment as the respective fiduciary in a like manner as provided for a trustee under Section 91-8-701(a).

(b) A trust advisor, trust protector, or other fiduciary other than a cotrustee, the cotrustee already being provided for in Section 91-8-701(b), may reject its appointment as the respective fiduciary in a like manner as provided for a trustee under Section 91-8-701(b).

(c) A trust advisor, trust protector, or other fiduciary other than a cotrustee, the cotrustee already being provided for

in Section 91-8-701(c), may, without accepting its appointment as the respective fiduciary, carry out the appropriate activities relative to the respective fiduciary as are provided for a trustee under Section 91-8-701(c).

SECTION 55. The following shall be codified as Section 91-8-712, Mississippi Code of 1972:

91-8-712. **Directed trusts; fiduciary's bond.** (a) Section 91-8-702 applies to trust advisors, trust protectors, or other fiduciaries other than cotrustees, the cotrustees already being provided for in Section 91-8-702.

(b) When exercising its powers under this section, the court shall consider the powers, duties, and liabilities relative to the respective fiduciaries other than a cotrustee and whether any of the respective fiduciaries are excluded fiduciaries.

SECTION 56. The following shall be codified as Section 91-8-713, Mississippi Code of 1972:

91-8-713. **Vacancy; directed trusts.** (a) Except as otherwise provided by the terms of the trust upon obtaining knowledge of a vacancy in the office of trust advisor or trust protector, the trustee shall be vested with any fiduciary power or duty that otherwise would be vested in the trustee but that by the terms of the trust was vested in the trust advisor or trust protector, until such time that the vacancy in the office of trust advisor or trust protector, as applicable, is filled.

(b) The vacancy shall be filled in the same manner as would a vacancy in trusteeship that is required to be filled, either as provided by Section 91-8-704(c) if the trust is a noncharitable trust, or as provided by Section 91-8-704(d) if the trust is a charitable trust. Section 91-8-704(e) shall also apply relative to trust advisors and trust protectors in the same manner as that subsection does to trustees and vacancies in trusteeship.

(c) Notwithstanding subsection (a), a trustee shall not be liable for failing to exercise or assume any power or duty held by a trust advisor or trust protector and conferred upon the trustee by subsection (a) for the one-hundred-twenty-day period immediately following the date the trustee obtains knowledge of the vacancy.

SECTION 57. The following shall be codified as Section 91-8-714, Mississippi Code of 1972:

91-8-714. **Directed trusts; resignation of fiduciary.** (a) A trust advisor, trust protector, or other fiduciary other than a cotrustee, a cotrustee's resignation already being provided for in Section 91-8-705, may resign its appointment as the respective fiduciary in a like manner as provided for a trustee under Section 91-8-705.

(b) When exercising its powers under this section relative to resignation, the court shall consider the powers, duties, and liabilities relative to the respective fiduciaries other than a

cotrustee and whether any of the respective fiduciaries are excluded fiduciaries.

SECTION 58. The following shall be codified as Section 91-8-715, Mississippi Code of 1972:

91-8-715. **Directed trusts; removal of fiduciary.** (a) A trust advisor, trust protector, or other fiduciary other than a cotrustee, a cotrustee's removal already being provided for in Section 91-8-706, may be removed as the respective fiduciary in a like manner as provided for a trustee under Section 91-8-706.

(b) When exercising its powers under this section relative to removal of the respective fiduciary, the court shall consider the powers, duties, and liabilities relative to the respective fiduciaries other than a cotrustee and whether any of the respective fiduciaries are excluded fiduciaries.

ARTICLE 8

DUTIES AND POWERS OF TRUSTEE

SECTION 59. The following shall be codified as Section 91-8-801, Mississippi Code of 1972:

91-8-801. **Duty to administer trust.** Upon acceptance of a trusteeship, the trustee shall administer the trust until such time as the trust terminates or a successor trustee is appointed and all assets are delivered in good faith, in accordance with its terms and purposes and the interests of the beneficiaries, and in accordance with this chapter.

SECTION 60. The following shall be codified as Section 91-8-802, Mississippi Code of 1972:

91-8-802. **Duty of loyalty.** (a) A trustee shall administer the trust solely in the interests of the beneficiaries.

(b) Subject to the rights of persons dealing with or assisting the trustee as provided in Section 91-8-1012 or as may otherwise be allowed under Mississippi law, a sale, encumbrance, or other transaction involving the investment or management of trust property entered into by the trustee for the trustee's own personal account or which is otherwise affected by a conflict between the trustee's fiduciary and personal interests is voidable by a beneficiary affected by the transaction unless:

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

(2) The transaction was approved by the court;

(3) The beneficiary did not commence a judicial proceeding within the time allowed by Section 91-8-1005;

(4) The beneficiary consented to the trustee's conduct, ratified the transaction, or released the trustee in compliance with Section 91-8-1009; or

(5) The transaction involves a contract entered into or claim acquired by the trustee before the person became or contemplated becoming trustee.

(c) A sale, encumbrance, or other transaction involving the investment or management of trust property is presumed to be

affected by a conflict between personal and fiduciary interests if it is entered into by the trustee with:

- (1) The trustee's spouse;
- (2) The trustee's descendants, siblings, parents, or their spouses;
- (3) An agent or attorney of the trustee; or
- (4) A corporation or other person or enterprise in

which the trustee, or a person that owns a significant interest in the trustee, has an interest that might affect the trustee's best judgment.

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

(e) In addition to all other permissible investments and delegatable duties listed in this title, so long as they are fairly priced and in accordance with the interest of the beneficiaries and the interests of the fiduciary's appointment and otherwise comply with the Mississippi Uniform Prudent Investor Act or Article 12 of this chapter, a fiduciary may purchase, sell, hold or otherwise deal with an affiliate or an interest in an affiliated investment, as well as delegate to an affiliate or other agent associated with the fiduciary and, upon satisfaction of the conditions stated in subsection (g), the fiduciary may

receive fiduciary compensation from the account at the same rate as the fiduciary would otherwise be entitled to be compensated. These activities shall occur without any presumption of a conflict between personal and fiduciary interests of the trustee or other fiduciary.

(f) As used in this section:

(1) "Affiliate" means any corporation or other entity that directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with the fiduciary.

(2) "Affiliated investment" means an investment for which the fiduciary or an affiliate of the fiduciary acts as adviser, administrator, distributor, placement agent, underwriter, broker or in any other capacity for which it receives or has received a fee or commission from the investment or an investment acquired or disposed of in a transaction for which the fiduciary or an affiliate of the fiduciary receives or has received a fee or commission. "Affiliated investment" also means an investment in an insurance contract purchased from an insurance agency owned by, or affiliated with, the fiduciary, or any of its affiliates.

(3) "Delegate to an affiliate or associated agent" means a proper delegation of any duty of the fiduciary to any person or entity that is affiliated with, or associated with, the fiduciary. The action of doing any of the above shall be known as a "delegation to an affiliate or associated agent."

(4) "Fee or commission" means compensation paid to a fiduciary or an affiliate thereof on account of its services to or on behalf of an investment.

(5) For purposes of this section, "fiduciary" means any fiduciary as defined in Section 91-8-103, as well as any other fiduciary.

(6) "Investment" shall mean any security as defined in Section 2(a)(1) of the Securities Act of 1933, any contract of sale of a commodity for future delivery within the meaning of Section 2(i) of the Commodity Exchange Act, or any other asset permitted for fiduciary accounts pursuant to the terms of the Mississippi Uniform Prudent Investor Act or by the terms of the governing instrument, including by way of illustration and not limitation: shares or interests in a public or private investment fund, including, but not limited to, a public or private investment fund organized as a limited partnership, limited liability company, statutory or common-law business trust, real estate investment trust, joint venture or other general or limited partnership, or an open-end or closed-end management type investment company or investment trust registered under the Investment Company Act of 1940.

(g) A fiduciary seeking compensation pursuant to subsection (e) shall, as is applicable relative to the fiduciary's particular appointment, disclose either: to those persons entitled to be kept informed about the administration of a trust under Section

91-8-813(a), subject to the provisions of Sections 91-8-813(d) and 91-8-105(d); to each principal in an agency relationship; or to all current recipients of statements of any other fiduciary account not described above; all fees or commissions paid or to be paid by the account, or received or to be received by an affiliate arising from such affiliated investment or delegation to an affiliate or associated agent. The disclosure required under this subsection (g) may be given either in a copy of the prospectus or any other disclosure document prepared for the affiliated investment under federal or state securities laws or in a written summary that includes all fees or commissions received or to be received by the fiduciary or any affiliate of the fiduciary and an explanation of the manner in which such fees or commissions are calculated, either as a percentage of the assets invested or by some other method. The disclosure shall be made at least annually unless there has been no increase in the rate at which fees or commissions are calculated since the most recent disclosure. Notwithstanding this subsection (g), no such disclosure is required if the governing instrument or a court order expressly authorizes the fiduciary to invest the fiduciary account in affiliated investments or to perform the delegation to an affiliate or associated agent.

(h) A fiduciary that has complied with subsection (g), whether by making the applicable disclosure or by relying on the terms of a governing instrument or court order, shall have full

authority to administer an affiliated investment, including the authority to vote proxies thereon, without regard to the affiliation between the fiduciary and the investment or the fiduciary and delegatee, as the case may be.

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

(j) The following transactions, if fairly priced and in accordance with the interest of the beneficiaries and the purposes of the trust, are not presumed to be affected by a conflict between the trustee's personal and fiduciary interest if any investment made pursuant to the transaction otherwise complies with the Mississippi Prudent Investor Act:

(1) An agreement between a trustee and a beneficiary relating to the appointment or compensation of the trustee, or any of its affiliates;

(2) Payment of reasonable compensation to the trustee, or any of its affiliates;

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

(4) A deposit of trust money in a regulated financial-service institution operated by the trustee or an affiliate;

(5) An advance by the trustee of money for the protection of the trust;

(6) An investment by a trustee in securities of an investment company or investment trust to which the trustee, or its affiliates, provides services in a capacity other than as a trustee provided that any investment made pursuant to the transaction otherwise complies with the Mississippi Prudent Investor Act;

(7) The placing of securities transactions by a trustee through a securities broker that is part of the same company as the trustee, is owned by the trustee, or is affiliated with the trustee;

(8) Any loan from the trustee or its affiliate;

(9) An investment in an insurance contract purchased from an insurance agency owned by, or affiliated with the trustee, or any of its affiliates; or

(10) A delegation and any transaction made pursuant to the delegation from a trustee to an agent that is affiliated or associated with the trustee.

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

SECTION 61. The following shall be codified as Section 91-8-803, Mississippi Code of 1972:

91-8-803. **Impartiality.** If a trust has two (2) or more beneficiaries, the trustee shall act impartially in investing, managing, and distributing the trust property, giving due regard to the beneficiaries' respective interests and the purposes of the trust.

SECTION 62. The following shall be codified as Section 91-8-804, Mississippi Code of 1972:

91-8-804. **Prudent administration.** A trustee shall administer the trust as a prudent person would, by considering the purposes, terms, distributional requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.

SECTION 63. The following shall be codified as Section 91-8-805, Mississippi Code of 1972:

91-8-805. **Costs of administration.** In administering a trust, the trustee may incur only costs that are reasonable in relation to the trust property, the purposes of the trust, and the skills of the trustee.

SECTION 64. The following shall be codified as Section 91-8-806, Mississippi Code of 1972:

91-8-806. **Trustee's skills.** A trustee who has special skills or expertise, or is named trustee in reliance upon the

trustee's representation that the trustee has special skills or expertise, shall use those special skills or expertise.

SECTION 65. The following shall be codified as Section 91-8-807, Mississippi Code of 1972:

91-8-807. **Delegation by trustee.** (a) A trustee may delegate duties and powers that a prudent trustee could properly delegate under the circumstances. The trustee shall exercise reasonable care, skill, and caution in:

- (1) Selecting an agent;
- (2) Establishing the scope and terms of the delegation, consistent with the purposes and terms of the trust; and
- (3) Periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the terms of the delegation.

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

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

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

SECTION 66. The following shall be codified as Section 91-8-808, Mississippi Code of 1972:

91-8-808. **Powers to direct.** (a) While a trust is revocable, the trustee may follow a direction of the settlor that is contrary to the terms of the trust or contrary to the normal practice of the trustee in regard to the action requested.

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

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

(d) If a person holds a power to direct pursuant to Article 12 of this chapter, that person is a trust advisor, trust protector, or both. The power holder is subject to all the provisions of Article 12, including any duties prescribed by Article 12 and any provisions that make the power holder a fiduciary. Any trustee or other person that under Article 12 is relieved of any duty or any liability, or is otherwise protected under Article 12, shall be so relieved and otherwise protected.

SECTION 67. The following shall be codified as Section 91-8-809, Mississippi Code of 1972:

91-8-809. **Control and protection of trust property.** A trustee shall take reasonable steps to take control of and protect the trust property.

SECTION 68. The following shall be codified as Section 91-8-810, Mississippi Code of 1972:

91-8-810. **Recordkeeping and identification of trust property.** (a) A trustee shall keep adequate records of the administration of the trust.

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

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

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

SECTION 69. The following shall be codified as Section 91-8-811, Mississippi Code of 1972:

91-8-811. **Enforcement and defense of claims.** (a) A trustee shall take reasonable steps to enforce claims of the trust and to defend claims against the trust.

(b) A trustee may abandon or assign any claim that it believes is unreasonable to enforce to one or more of the beneficiaries of the trust holding the claim.

SECTION 70. The following shall be codified as Section 91-8-812, Mississippi Code of 1972:

91-8-812. **Collecting trust property.** A trustee shall take reasonable steps to compel a former trustee or other person to deliver trust property to the trustee, and to redress a breach of trust known to the trustee to have been committed by a former trustee. No successor trustee appointed after the examination of the accounts of a trustee or the waiver of the examination by the beneficiaries shall be responsible for the acts and omissions of the prior trustee.

SECTION 71. The following shall be codified as Section 91-8-813, Mississippi Code of 1972:

91-8-813. **Duty to inform and report.** (a) (1) A trustee shall keep the beneficiaries of the trust that are current mandatory or permissible distributees of trust income or principal, or both, reasonably informed about the administration of the trust and of the material facts necessary for them to protect their interests.

(2) Unless unreasonable under the circumstances, a trustee shall respond in a reasonable amount of time to a qualified beneficiary's request for information related to the administration of the trust. Additionally, a qualified beneficiary shall reimburse the trustee for any reasonable expenses incurred in responding to requests for information.

(3) The requirements of subsection (a) shall also apply to the benefit of anyone who, in a capacity other than that of a fiduciary, holds a power of appointment.

(b) The trustee of an irrevocable or nongrantor trust within sixty (60) days after the acceptance and funding of a trust, excluding nominal funding for the trust to have corpus or the depositing of insurance policies on the life of a living person, shall notify each current income beneficiary, each vested ultimate beneficiary of a remainder interest and anyone who, in a capacity other than that of a fiduciary, holds a power of appointment, that the trust has been established.

(1) The required notice shall:

(A) Be sent by first-class mail or personal delivery; and

(B) Consist of either a complete copy of the document establishing the trust together with the trustee's name, address and telephone number or an abstract of the trust, as the trustee, in the trustee's absolute discretion, may choose.

(2) The abstract shall contain:

(A) The name, address and telephone number of each trustee; and

(B) If for a current income beneficiary:

(i) The number of other current income beneficiaries;

(ii) Whether distributions of income are required or discretionary; and

(iii) Whether distributions of principal are permitted and, if so, for what purpose or purposes; and

(C) If for a remainder beneficiary:

(i) The number of other remainder

beneficiaries; and

(ii) The conditions that must be met before the beneficiary's share is distributable.

(D) If for anyone who, in a capacity other than that of a fiduciary, holds a power of appointment, all of the information required by subsection (b) necessary or beneficial for that person to effectively determine whether or not to exercise that power of appointment.

(c) Upon the termination of an interest of any one or more of the current income beneficiaries:

(1) The trustee shall similarly notify the income beneficiaries who are takers of the terminated interest of their interest by sending or delivering them the notice required in subsection (b); and

(2) If at that time the period described in subsection (b) has lapsed, the trustee shall similarly notify anyone who, in a capacity other than that of a fiduciary, holds a power of appointment by sending or delivering to the person the notice required in subsection (b).

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

in a capacity other than that of a fiduciary, holds a power of appointment has the same power as provided a beneficiary in this subsection to waive reports and other information and to withdraw a waiver previously given.

(e) Subsections (a) and (b) shall not apply to the extent that those provisions are waived or modified in accordance with Section 91-8-105(d).

(f) Subsection (a)(1) and subsection (b) do not apply to a trust created under a trust agreement that became irrevocable before July 1, 2014. Trust law in effect before July 1, 2014, regarding the subject matter of subsection (a)(1) and subsection (b) shall continue to apply to those trusts.

(g) If the trustee of a trust is bound by any written confidentiality restrictions with respect to an asset of a trust, a trustee may require that any beneficiary who is eligible to receive information pursuant to this or any other section of this chapter about the asset shall agree in writing to be bound by the confidentiality restrictions that bind the trustee before receiving the information from the trustee.

(h) A trust advisor, trust protector, or other fiduciary designated by the terms of the trust shall keep each excluded fiduciary designated by the terms of the trust reasonably informed about:

(1) The administration of the trust with respect to any specific duty or function being performed by the trust advisor,

trust protector, or other fiduciary to the extent that the duty or function would normally be performed by the excluded fiduciary or to the extent that providing the information to the excluded fiduciary is reasonably necessary for the excluded fiduciary to perform its duties; and

(2) Any other material information that the excluded fiduciary would be required to disclose to the specified beneficiaries under subsection (a) without regard to whether the terms of the trust relieve the excluded fiduciary from providing the information to qualified beneficiaries. Neither the performance nor the failure to perform of a trust advisor, trust protector, or other fiduciary designated by the terms of the trust as provided in this subsection shall affect the limitation on the liability of any excluded fiduciary provided by Article 12 of this chapter.

SECTION 72. The following shall be codified as Section 91-8-814, Mississippi Code of 1972:

91-8-814. **Exercise of powers over discretionary and other interests; tax savings.** (a) Relative to exercise of powers over discretionary and other interests:

(1) "Improper motive" means to demonstrate action such as the following:

(A) A trustee refusing to make or limiting distributions to beneficiaries other than the trustee due to the

trustee's self-interest when the trustee also holds a beneficial interest subject to a discretionary interest; or

(B) A trustee making a distribution in excess of an ascertainable standard to himself or herself as beneficiary when the trustee is restricted by an ascertainable standard in the trust.

(2) Unless otherwise provided in the trust:

(A) If the settlor's spouse is named as a beneficiary, the settlor's spouse is still living and the trust is classified as a support trust, then the trustee shall consider the resources of the settlor's spouse, including the settlor's obligation of support, before making a distribution; and

(B) In all other cases, unless otherwise provided in the trust, the trustee need not consider the beneficiary's resources in determining whether a distribution should be made.

(b) The following provisions apply only to discretionary interests:

(1) A discretionary interest is neither a property interest nor an enforceable right; it is a mere expectancy;

(2) A court may review a trustee's distribution discretion only if the trustee acts dishonestly, acts with an improper motive, or fails to act, if under a duty to do so;

(3) A reasonableness standard shall not be applied to the exercise of discretion by the trustee with regard to a discretionary interest;

(4) Other than for the three (3) circumstances listed in subsection (b) (2), a court has no jurisdiction to review the trustee's discretion or to force a distribution; and

(5) Absent express language in the trust instrument to the contrary, if the distribution language in a discretionary interest permits unequal distributions between beneficiaries or distributions to the exclusion of other beneficiaries, the trustee may distribute all of the accumulated, accrued, or undistributed income and principal to one (1) beneficiary in the trustee's discretion.

(c) The following provisions apply only to mandatory or support interests:

(1) A beneficiary of a mandatory or a support interest has an enforceable right to a distribution pursuant to a court's review;

(2) A trustee's distribution decision may be reviewed for unreasonableness, dishonesty, improper motivation, or failure to act, if under a duty to do so; and

(3) In the case of a support interest, nothing in this section shall raise a beneficiary's support interest to the level of a property interest.

(d) Unless otherwise provided in subsection (f), and unless the terms of the trust expressly indicate that a rule in this subsection does not apply:

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

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

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

(f) Subsection (d) shall not apply to:

(1) A power held by the settlor's spouse who is the trustee of a trust for which a marital deduction, as defined in Section 2056(b)(5) or 2523(e) of the Internal Revenue Code, was previously allowed;

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

(3) A trust if contributions to the trust qualify for the annual exclusion under Section 2503(c) of the Internal Revenue Code.

SECTION 73. The following shall be codified as Section 91-8-815, Mississippi Code of 1972:

91-8-815. **General powers of trustee.** (a) A trustee, without authorization by the court, may exercise:

(1) Powers conferred by the terms of the trust; and

(2) Except as limited by the terms of the trust:

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

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

(C) Any other powers conferred by this chapter.

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

SECTION 74. The following shall be codified as Section 91-8-816, Mississippi Code of 1972:

91-8-816. **Specific powers of trustee.** (a) Any references contained in a will or trust incorporating by reference the powers enumerated in Section 91-9-101 et seq. will incorporate by reference the powers contained in this section.

(b) Unless the terms of the instrument expressly provide otherwise and without limiting the authority conferred by Section 91-8-815, a trustee may:

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

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

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

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

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

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

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

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

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

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

(D) Deposit the securities with a depository or other regulated financial-service institution;

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

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

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

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

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

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

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

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

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

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

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

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

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

(16) Exercise elections with respect to federal, state, and local taxes, including allocating capital gains to distributable net income;

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

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

(19) Pledge trust property to guarantee loans made by others to the beneficiary;

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

(21) Pay an amount distributable to a beneficiary who is under a legal disability or who the trustee reasonably believes

is incapacitated, by paying it directly to the beneficiary or applying it for the beneficiary's benefit, or by:

(A) Paying it to the conservator or guardian of the beneficiary's estate or, if there is no conservator or guardian of the beneficiary's estate, to the conservator or guardian of the beneficiary;

(B) Paying it to the beneficiary's custodian under the Uniform Transfers to Minors Act, and, for that purpose, creating a custodianship or custodial trust;

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

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

(22) On distribution of trust property or the division or termination of a trust, make distributions in divided or undivided interests, allocate particular assets in proportionate or disproportionate shares, value the trust property for those purposes, and adjust for resulting differences in valuation and basis for income tax purposes;

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

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

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

(26) On termination of the trust, exercise the powers appropriate to windup the administration of the trust and distribute the trust property to the persons entitled to it;

(27) Employ persons, including attorneys, auditors, investment advisors or agents, even if they are associated with the trustee, to advise or assist the trustee in the performance of his administrative duties; to act without independent investigation upon their recommendations; and instead of acting personally, to employ one or more agents to perform any act of administration, whether or not discretionary; and

(28) (A) A trustee may insure the life of any person in which the trustee of the trust has an insurable interest as set forth in Section 83-5-251.

(B) A trustee may retain any life insurance policy contributed to a trust by a settlor, or purchased by the trustee upon the request of the settlor, as an asset of the trust without regard to any lack of diversification caused thereby and without regard to the terms and conditions of the life insurance policy. The trustee shall not be liable for lack of diversification to any

beneficiary of a trust for the trustee's retention of the life insurance policy.

(C) With respect to a life insurance policy owned by the trust a trustee may:

(i) Borrow funds from any party, including an insurance company, for the purpose of paying premiums on any policy of insurance owned by the trust and enter into a "split dollar" or other similar arrangement;

(ii) Collaterally assign any policy to a creditor of the trust;

(iii) Exercise any and all rights under any life insurance policy, including the power to pay, forego or adjust the amount of any premium payments, adjust the type and amount of death benefit, receive or apply dividends to premiums or purchase additional insurance, and allocate policy values among any subaccounts available under any variable or similar policy; and

(iv) With the consent of the insured, to sell any policy to a third party in a life settlement or viatical settlement transaction.

SECTION 75. The following shall be codified as Section 91-8-817, Mississippi Code of 1972:

91-8-817. **Distribution upon termination.** (a) Upon termination or partial termination of a trust, the trustee may send to the beneficiaries a proposal for distribution. The right

of any beneficiary to object to the proposed distribution terminates if the beneficiary does not notify the trustee of an objection within thirty (30) days after the proposal was sent but only if the proposal informed the beneficiary of the right to object and of the time allowed for objection. For the purpose of determining the date a proposed distribution was sent, if exact confirmation is unavailable it can be assumed it was received five (5) days after the date of mailing.

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

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

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

or

(2) The beneficiary, at the time of the release, did not know of the material facts relating to the alleged breach and the trustee had actual knowledge of the facts relating to the alleged breach.

ARTICLE 9

UNIFORM PRUDENT INVESTOR ACT

SECTION 76. The following shall be codified as Section 91-8-901, Mississippi Code of 1972:

91-8-901. **Prudent Investor Act Incorporated by Reference.**

Title 91, Chapter 9, Article 13, the Mississippi Uniform Prudent Investor Act, is incorporated in this chapter by reference.

ARTICLE 10

LIABILITY OF TRUSTEES AND RIGHTS OF PERSONS DEALING WITH TRUSTEE

SECTION 77. The following shall be codified as Section 91-8-1001, Mississippi Code of 1972:

91-8-1001. **Remedies for breach of trust.** (a) A violation by a trustee of a duty the trustee owes to a beneficiary is a breach of trust.

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

- (1) Compel the trustee to perform the trustee's duties;
- (2) Enjoin the trustee from committing a breach of trust;
- (3) Compel the trustee to redress a breach of trust by paying money, restoring property, or other means;
- (4) Order a trustee to account;
- (5) Appoint a special fiduciary to take possession of the trust property and administer the trust;
- (6) Suspend the trustee;
- (7) Remove the trustee as provided in Section 91-8-706;
- (8) Reduce or deny compensation to the trustee;
- (9) Subject to Section 91-8-1012, void an act of the trustee, impose a lien or a constructive trust on trust property,

or trace trust property wrongfully disposed of and recover the property or its proceeds; or

(10) Order any other appropriate relief whether provided elsewhere in this chapter, available at common law or under equity principles.

SECTION 78. The following shall be codified as Section 91-8-1002, Mississippi Code of 1972:

91-8-1002. **Damages for breach of trust.** (a) A trustee who commits a breach of trust is liable to the beneficiaries affected for:

(1) The greater of:

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

(B) The profit the trustee made by reason of the breach; and

(2) Any measure of damages otherwise provided by law.

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

received a benefit from the breach of trust is not entitled to contribution from another trustee to the extent of the benefit received.

SECTION 79. The following shall be codified as Section 91-8-1003, Mississippi Code of 1972:

91-8-1003. **Damages in absence of breach.** Absent a breach of trust, a trustee is not liable to a beneficiary for a loss or depreciation in the value of trust property or for not having made a profit.

SECTION 80. The following shall be codified as Section 91-8-1004, Mississippi Code of 1972:

91-8-1004. **Attorney's fees and costs.** (a) In a judicial proceeding involving the administration of a trust, the court, as justice and equity may require, may award costs and expenses, including reasonable attorney's fees, to any party, to be paid by another party or from the trust that is the subject of the controversy.

(b) In a nonjudicial proceeding involving the administration of a trust, the trustee may pay fees, other reasonable costs, and expenses from trust assets where all of the parties to the proceeding agree in writing.

(c) In a mediation or arbitration proceeding involving the administration of a trust, the mediator or arbitrator may award fees, other reasonable costs, and expenses against the assets of the trust.

SECTION 81. The following shall be codified as Section 91-8-1005, Mississippi Code of 1972:

91-8-1005. **Limitation of action against trustee by a beneficiary, a trustee, trust advisor or trust protector.** (a) A beneficiary may not commence a proceeding against a trustee for breach of trust more than one (1) year after the date the beneficiary or a representative of the beneficiary was sent a report that adequately disclosed the existence of a potential claim for breach of trust.

(b) A report adequately discloses the existence of a potential claim for breach of trust if it provides sufficient information so that the beneficiary or beneficiary's representative knows of the potential claim or has sufficient information to be presumed to know of it, or to be put on notice to inquire into its existence.

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

- (1) The removal, resignation, or death of the trustee;
- (2) The termination of the beneficiary's interest in the trust; or
- (3) The termination of the trust.

(d) A trustee may not commence a proceeding against a cotrustee or a former trustee for breach of trust more than one (1) year after the date the trustee or a representative of the

trustee was sent a report that adequately disclosed facts indicating the existence of a potential claim for breach of trust.

(e) A report adequately discloses facts indicating the existence of a potential claim for breach of trust if it provides sufficient information so that the trustee or the trustee's representative knows of the potential claim or has sufficient information to be presumed to know of it, or to be put on notice to inquire into its existence.

(f) If subsection (d) does not apply, a judicial proceeding by a trustee against a cotrustee or former trustee for breach of trust must be commenced within three (3) years after the first to occur of:

(1) The removal, resignation, or death of the cotrustee or a former trustee;

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

(3) The termination of the trust.

(g) A trust advisor or trust protector may not commence a proceeding against a trustee or a former trustee for breach of trust more than one (1) year after the date the trust advisor or trust protector or the respective representative of each was sent a report that adequately disclosed facts indicating the existence of a potential claim for breach of trust.

(h) A report adequately discloses facts indicating the existence of a potential claim for breach of trust if it provides

sufficient information so that the trust advisor or trust protector or the respective representative of each knows of the potential claim or has sufficient information to be presumed to know of it, or to be put on notice to inquire into its existence.

(i) If subsection (g) does not apply, a judicial proceeding by a trust advisor or trust protector against a trustee or former trustee for breach of trust must be commenced within three (3) years after the first to occur of:

(1) The removal, resignation, or death of the trustee or a former trustee;

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

(3) The termination of the trust.

(j) Notwithstanding subsections (d) through (i), no trustee, trust advisor, or trust protector may commence a proceeding against a trustee or a former trustee if, under Section 91-8-1005(a) through (c), none of the beneficiaries may commence a proceeding against the cotrustee or former trustee for the breach of trust.

SECTION 82. The following shall be codified as Section 91-8-1006, Mississippi Code of 1972:

91-8-1006. **Reliance on trust instrument.** A trustee who acts in reasonable reliance on the terms of the trust as expressed in the trust instrument is not liable to a beneficiary for a breach of trust to the extent the breach resulted from the reliance.

SECTION 83. The following shall be codified as Section 91-8-1007, Mississippi Code of 1972:

91-8-1007. **Event affecting administration or distribution.**
If the happening of an event, including marriage, divorce, performance of educational requirements, or death, affects the administration or distribution of a trust, a trustee who has exercised reasonable care to ascertain the happening of the event is not liable for a loss resulting from the trustee's lack of knowledge.

SECTION 84. The following shall be codified as Section 91-8-1008, Mississippi Code of 1972:

91-8-1008. **Exculpation of trustee.** (a) A provision of a trust relieving a trustee of liability for breach of trust is unenforceable to the extent that it:

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

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

(b) Except for provisions intended to provide protection for carrying out a stated purpose in the trust instrument, an exculpatory provision drafted or caused to be drafted by the trustee is invalid as an abuse of a fiduciary or confidential relationship unless the trustee proves that the exculpatory

provision is fair under the circumstances and that its existence and contents were adequately communicated to the settlor.

SECTION 85. The following shall be codified as Section 91-8-1009, Mississippi Code of 1972:

91-8-1009. **Beneficiary's consent, release, or ratification.**
A trustee is not liable to a beneficiary for breach of trust if the beneficiary consented to the conduct constituting the breach, released the trustee from liability for the breach, or ratified the transaction constituting the breach, unless:

- (1) The consent, release, or ratification of the beneficiary was induced by improper conduct of the trustee; or
- (2) At the time of the consent, release, or ratification, the beneficiary did not know of the material facts relating to the breach and the trustee had actual knowledge of the facts relating to the alleged breach.

SECTION 86. The following shall be codified as Section 91-8-1010, Mississippi Code of 1972:

91-8-1010. **Limitation on personal liability of trustee.** (a)
Except as otherwise provided in the contract, a trustee is not personally liable on a contract properly entered into in the trustee's fiduciary capacity in the course of administering the trust if the trustee in the contract disclosed the fiduciary capacity.

(b) Except as otherwise provided in subsection (a) or (c), the debts, obligations and liabilities incurred by a trustee by

reason of the ownership, management, or control of trust property in the trustee's fiduciary capacity, shall be enforceable solely against the trust and its property, without any obligation or liability personally being borne by any trustee of the trust.

(c) Except as otherwise limited by state law, a trustee is personally liable for torts committed in the course of administering a trust only if the trustee is personally at fault.

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

SECTION 87. The following shall be codified as Section 91-8-1011, Mississippi Code of 1972:

91-8-1011. **Interest as general partner.** (a) Except as otherwise provided in subsection (c) or unless personal liability is imposed in the contract, a trustee who holds an interest as a general partner in a general or limited partnership is not personally liable on a contract entered into by the partnership after the trust's acquisition of the interest if the fiduciary capacity was disclosed in the contract or in a statement previously filed pursuant to the Uniform Partnership Act, Title 79, Chapter 13, Mississippi Code of 1972, or the Mississippi

Limited Partnership Act, Title 79, Chapter 14, Mississippi Code of 1972.

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

(c) The immunity provided by this section does not apply if an interest in the partnership is held by the trustee in a capacity other than that of trustee.

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

SECTION 88. The following shall be codified as Section 91-8-1012, Mississippi Code of 1972:

91-8-1012. **Protection of person dealing with trustee.** (a) A person other than a beneficiary who in good faith assists a trustee, or who in good faith and for value deals with a trustee, without knowledge that the trustee is exceeding or improperly exercising the trustee's powers is protected from liability as if the trustee properly exercised the power.

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

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

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

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

SECTION 89. The following shall be codified as Section 91-8-1013, Mississippi Code of 1972:

91-8-1013. **Certification of trust.** (a) Instead of furnishing a copy of the trust instrument to any person to evidence the existence and validity of the trust, the trustee may furnish to the person a certification of trust, signed by the trustee or trustees having signature authority as identified in paragraph (5) of this subsection, attested by a notary public, and shall contain the following:

- (1) An affirmation of the current existence of the trust and the date on which the trust came into existence;
- (2) The identity of the settlor or settlors;
- (3) The identity and address of the currently acting trustee or trustees and may contain the identity and address of

the named successor trustee or trustees or a statement that no successor is named;

(4) The administrative or managerial powers of the trustee in a pending transaction or relevant to the request;

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

(6) When there are multiple trustees or multiple successor trustees, the signature authority of the trustees indicating whether all or less than all of the currently acting trustees are required to sign in order to exercise various powers of the trustee;

(7) Where there are successor trustees designated, a statement detailing the conditions for their succession or a statement that a third party may rely on the authority of one or more successors without proof of their succession;

(8) The trust's Taxpayer Identification Number, whether a social security number or Employer Identification Number, but only if the trust's identification number is essential to the transaction for which the request for the trust document is made;

(9) The name in which title to trust property may be taken; and

(10) A statement that, to the best of the trustee's knowledge, the trust has not been revoked, modified, or amended in any manner that would cause the representations contained in the certification of trust to be incorrect.

(b) The certification of trust shall not be required to contain the dispositive provisions of a trust that set forth the distribution of the trust estate.

(c) The trustee offering the certification of trust may provide copies of all or any part of the trust document and amendments, if any. Nothing in this section is intended to require or imply an obligation to provide dispositive provisions of the trust or a copy of the entire trust documents and amendments.

(d) A person who acts in reliance upon a certification of trust without knowledge that the representations contained therein are incorrect is not liable to any person for so acting. A person who does not have actual knowledge that the facts contained in the certification of trust are incorrect may assume without inquiry the existence of the facts contained in the certification. Actual knowledge shall not be inferred solely from the fact that a copy of all or part of the trust instrument is held by the person relying on the trust certification. Nothing contained in this section shall limit the rights of the beneficiaries of the trust against the trustee. Any person relying on the certification of trust shall be indemnified from the assets of the trust to the extent of the share of the trust attributable to the beneficiary or beneficiaries bringing any action against the person for any costs, damage, attorney fees, or other expenses incurred in

defending any action against the person arising for the transaction to which a certification of trust related.

(e) A person's failure to request a certification of trust does not affect the protections provided that person in this section. No inference that the person has not acted in good faith or that the person was negligent may be drawn from the failure of the person to request a certification of trust. Nothing in this section is intended to create an implication that a person is liable for acting in reliance on a certification of trust under circumstances where the requirements of this section are not satisfied.

(f) Nothing in this section shall be construed to require a third party, when presented with a trust certificate, to enter into a contract with a trustee relating to trust assets or obligations, or to preclude a third party from demanding as a precondition to any contract that the trustee provide additional information in order to clarify any ambiguities or inconsistencies in the trust certificate.

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

SECTION 90. The following shall be codified as Section 91-8-1014, Mississippi Code of 1972:

91-8-1014. **Enforcement of no-contest, in terrorem or forfeiture provisions.** (a) For the purposes of this section,

"no-contest provision" includes a "no-contest provision," "in terrorem provision" or "forfeiture provision" of a trust instrument. A "no-contest provision" means a provision that, if given effect, would reduce or eliminate the interest of any beneficiary of the trust who, directly or indirectly, initiates or otherwise pursues:

- (1) Any action to contest the validity of the trust or the terms of the trust;
- (2) Any action to set aside or vary the terms of the trust;
- (3) Any action to challenge the acts of the trustee or other fiduciary of the trust in the performance of the trustee's or other fiduciary's duties as described in the terms of the trust; or
- (4) Any other act or proceedings to frustrate or defeat the settlor's intent as expressed in the terms of the trust.

(b) With regard to whether the beneficiary sought, received or relied upon legal counsel, a no-contest provision shall be enforceable according to the express terms of the no-contest provision without regard to the beneficiary's good or bad faith in taking the action that would justify the complete or partial forfeiture of the beneficiary's interest in the trust under the terms of the no-contest provision unless probable cause exists for the beneficiary taking such action on the grounds of:

- (1) Fraud;

- (2) Duress;
- (3) Revocation;
- (4) Lack of testamentary capacity;
- (5) Undue influence;
- (6) Mistake;
- (7) Forgery; or
- (8) Irregularity in the execution of the trust

instrument.

(c) Subsection (b) shall not apply to:

(1) Any action brought solely to challenge the acts of the trustee or other fiduciary of the trust to the extent that the trustee or other fiduciary has committed a breach of fiduciary duties or breach of trust;

(2) Any action brought by the trustee or any other fiduciary serving under the terms of the trust, unless the trustee or other fiduciary is a beneficiary against whom the no-contest provision is otherwise enforceable;

(3) Any agreement among the beneficiaries and any other interested persons in settlement of a dispute or resolution of any other matter relating to the trust, including, without limitation, any nonjudicial settlement agreement;

(4) Any action to determine whether a proposed or pending motion, petition, or other proceeding constitutes a contest within the meaning of a no-contest provision;

(5) Any action brought by a beneficiary or on behalf of any such beneficiary for a construction or interpretation of the terms of the trust; or

(6) Any action brought by the Attorney General for a construction or interpretation of a charitable trust or a trust containing a charitable interest if a provision exists in a trust purporting to penalize a charity or charitable interest for contesting the trust if probable cause exists for instituting proceedings.

(d) Pursuant to this section, courts shall enforce the settlor's intent as reflected in a no-contest provision to the greatest extent possible.

ARTICLE 11

MISCELLANEOUS PROVISIONS

SECTION 91. The following shall be codified as Section 91-8-1101, Mississippi Code of 1972:

91-8-1101. **Uniformity of application and construction.** In applying and construing this chapter, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

SECTION 92. The following shall be codified as Section 91-8-1102, Mississippi Code of 1972:

91-8-1102. **Electronic records and signatures.** The provisions of this chapter governing the legal effect, validity, or enforceability of electronic records or electronic signatures,

and of contracts formed or performed with the use of such records or signatures, conform to the requirements of Section 102 of the Electronic Signatures in Global and National Commerce Act (15 USC Section 7002) and supersede, modify, and limit the requirements of the Electronic Signatures in Global and National Commerce Act.

SECTION 93. The following shall be codified as Section 91-8-1103, Mississippi Code of 1972:

91-8-1103. **Severability clause.** If any provision of this chapter or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

SECTION 94. The following shall be codified as Section 91-8-1106, Mississippi Code of 1972:

91-8-1106. **Application to existing relationships.** (a)
Except as otherwise provided in this chapter:

(1) This chapter applies to all trusts created before, on, or after July 1, 2014;

(2) This chapter applies to all judicial proceedings concerning trusts commenced on or after July 1, 2014;

(3) This chapter applies to judicial proceedings concerning trusts commenced before July 1, 2014, unless the court finds that application of a particular provision of this chapter would substantially interfere with the effective conduct of the

judicial proceedings or prejudice the rights of the parties, in which case the particular provision of this chapter does not apply and the superseded law applies;

(4) Any rule of construction or presumption provided in this chapter applies to trust instruments executed before July 1, 2014, unless there is a clear indication of a contrary intent in the terms of the trust; and

(5) An act done before July 1, 2014, is not affected by this chapter.

(b) If a right is acquired, extinguished, or barred upon the expiration of a prescribed period that has commenced to run under any other statute before July 1, 2014, that statute continues to apply to the right even if it has been repealed or superseded.

SECTION 95. The following shall be codified as Section 91-8-1107, Mississippi Code of 1972:

91-8-1107. **Alter ego.** (a) Absent clear and convincing evidence, no settlor of an irrevocable trust may be deemed to be the alter ego of a trustee of such trust.

(b) None of the following factors, by themselves or in combination, may be considered sufficient evidence for a court to conclude that the settlor controls a trustee, or is the alter ego of a trustee of such trust:

(1) Any combination of the factors listed in Section 91-8-1108 regarding dominion and control over a trust;

(2) Isolated occurrences where the settlor has signed checks, made disbursements, or executed other documents related to the trust as a trustee, a trust advisor or a trust protector, when in fact the settlor was not a trustee, trust advisor or trust protector;

(3) Making any requests for distributions on behalf of beneficiaries; or

(4) Making any requests to the trustee to hold, purchase, or sell any trust property.

SECTION 96. The following shall be codified as Section 91-8-1108, Mississippi Code of 1972:

91-8-1108. **Dominion and control over a trust.** In the event a person challenges a settlor's or a beneficiary's influence over a trust, none of the following factors, alone or in combination, shall enter into a determination that dominion and control over a trust exists:

(1) The settlor or a beneficiary is serving as a trustee, a trust advisor, a trust protector, or other fiduciary as described in this Title 91;

(2) The settlor or a beneficiary holds an unrestricted power to remove or replace a trustee, a trust advisor, a trust protector, or other fiduciary;

(3) The settlor or a beneficiary is a trust administrator, a general partner of a partnership, a manager of a limited liability company, an officer of a corporation, or holds

any other managerial function relative to any type of entity specified in this section, or relative to any other type of entity not so specified, and part or all of the trust property consists of an interest in such entity;

(4) A person related by blood or adoption to the settlor or a beneficiary is appointed as a trustee, a trust advisor, a trust protector, or other fiduciary;

(5) The settlor's or a beneficiary's agent, accountant, attorney, financial advisor, or friend is appointed as a trustee, a trust advisor, a trust protector, or other fiduciary;

(6) A business associate is appointed as a trustee, a trust advisor, a trust protector, or other fiduciary;

(7) A beneficiary holds any power of appointment over any or all of the trust property;

(8) The settlor holds a power to substitute property of equivalent value for property held by the trust, regardless of whether such power is:

(A) Held in a fiduciary or nonfiduciary capacity;

(B) Exercisable with or without the approval of any person in a fiduciary capacity; or

(C) Exercisable with or without the approval of any person having an interest adverse to such settlor;

(9) A trustee, a trust advisor, a trust protector or other fiduciary has the power to loan trust property to the

settlor for less than a full and adequate rate of interest or without adequate security;

(10) Any language relative to the power to make any distribution provides for any discretion relative to such distribution;

(11) The trust has only one (1) beneficiary eligible for current distributions; or

(12) The beneficiary is serving as a cotrustee, or as a trust advisor or trust protector under Article 12, or as any other fiduciary.

SECTION 97. The following shall be codified as Section 91-8-1109, Mississippi Code of 1972:

91-8-1109. **Protection of special needs trusts and other similar trusts for disabled persons.** Notwithstanding the provisions of this chapter that may otherwise be applicable to a trust, no provision thereof shall apply to any special needs trust, supplemental needs trust, or other similar trust established for a person with a disability as a beneficiary, including, without limitation, any trust established pursuant to the provisions of 42 USC Section 1396(p)(d)(4)A or C, as amended from time to time, or other similar federal or state statute, to the extent that the provision would disqualify the trust beneficiary at any time from eligibility for public needs-based assistance benefits for which the beneficiary would otherwise qualify.

ARTICLE 12

TRUST ADVISORS AND TRUST PROTECTORS

SECTION 98. The following shall be codified as Section 91-8-1201, Mississippi Code of 1972:

91-8-1201. **Powers of trust advisors and trust protectors.**

(a) A trust protector or trust advisor is any person, and may be a committee of more than one (1) person, other than a trustee, who under the terms of the trust has a power or duty with respect to a trust, including, but not limited to, one or more of the following powers:

(1) The power to modify or amend the trust instrument to achieve favorable tax status or respond to changes in any applicable federal, state, or other tax law affecting the trust, including, but not limited to, any rulings, regulations, or other guidance implementing or interpreting such laws;

(2) The power to amend or modify the trust instrument to take advantage of changes in the rule against perpetuities, laws governing restraints on alienation, or other state laws restricting the terms of the trust, the distribution of trust property, or the administration of the trust;

(3) The power to appoint a successor trust protector or trust advisor;

(4) The power to review and approve a trustee's trust reports or accountings;

(5) The power to change the governing law or principal place of administration of the trust;

(6) The power to remove and replace any trust advisor or trust protector for the reasons stated in the trust instrument;

(7) The power to remove a trustee, cotrustee, or successor trustee, for the reasons stated in the trust instrument, and appoint a successor;

(8) The power to consent to a trustee's or cotrustee's action or inaction in making distributions to beneficiaries;

(9) The power to increase or decrease any interest of the beneficiaries in the trust, to grant a power of appointment to one or more trust beneficiaries, or to terminate or amend any power of appointment granted in the trust;

(10) The power to perform a specific duty or function that would normally be required of a trustee or cotrustee;

(11) The power to advise the trustee or cotrustee concerning any beneficiary;

(12) The power to consent to a trustee's or cotrustee's action or inaction relating to investments of trust assets;

(13) The power to direct the acquisition, disposition, or retention of any trust investment;

(14) The power to terminate all or part of a trust;

(15) The power to veto or direct all or part of any trust distribution;

(16) The power to borrow money with or without security, and mortgage or pledge trust property for a period within or extending beyond the duration of the trust;

(17) The power to make loans out of trust property, including, but not limited to, loans to a beneficiary on terms and conditions, including without interest, considered to be fair and reasonable under the circumstances;

(18) The power to vote proxies and exercise all other rights of ownership relative to securities and business entities held by the trust;

(19) The power to select one or more investment advisors, managers or counselors, including, but not limited to, a trustee, and delegate to them any of its powers; and

(20) The power to direct the trustee with respect to any additional powers and discretions over investment and management of trust assets provided in the trust instrument.

(b) The exercise of a power by a trust advisor or a trust protector shall be exercised in the sole and absolute discretion of the trust advisor or trust protector and shall be binding on all other persons.

(c) Any power of a trust advisor or trust protector to directly or indirectly modify a trust may be granted notwithstanding the provisions of Sections 91-8-410 through 91-8-412 and 91-8-414.

(d) An excluded fiduciary may continue to follow the direction of a trust protector or trust advisor upon the incapacity or death of the grantor of a trust to the extent provided in the trust instrument.

(e) Notwithstanding anything in this section to the contrary, no modification, amendment, or grant of a power of appointment with respect to a trust, all of whose beneficiaries are charitable organizations, may authorize a trust protector or trust advisor to grant a beneficial interest in the trust to any noncharitable interest or purpose.

SECTION 99. The following shall be codified as Section 91-8-1202, Mississippi Code of 1972:

91-8-1202. **Trust advisors and trust protectors as fiduciaries.** (a) A trust advisor or trust protector, other than a beneficiary, is a fiduciary with respect to each power granted to the trust advisor or trust protector. In exercising any power or refraining from exercising any power, a trust advisor or trust protector shall act in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries.

(b) A trust advisor or trust protector is an excluded fiduciary with respect to each power granted or reserved exclusively to any one or more other trustees, trust advisors, or trust protectors.

SECTION 100. The following shall be codified as Section 91-8-1203, Mississippi Code of 1972:

91-8-1203. **Trust advisor and trust protector subject to court jurisdiction.** By accepting appointment to serve as a trust advisor or trust protector, the trust advisor or the trust protector submits personally to the jurisdiction of the courts of this state even if investment advisory agreements or other related agreements provide otherwise, and the trust advisor or trust protector may be made a party to any action or proceeding relating to a decision, action, or inaction of the trust advisor or trust protector.

SECTION 101. The following shall be codified as Section 91-8-1204, Mississippi Code of 1972:

91-8-1204. **No duty to review actions of trustee, trust advisor, or trust protector.** (a) Whenever, pursuant to the terms of a trust, an excluded fiduciary is to follow the direction of a trustee, trust advisor, or trust protector with respect to investment decisions, distribution decisions, or other decisions of the nonexcluded fiduciary, then, except to the extent that the terms of the trust provide otherwise, the excluded fiduciary shall have no duty to:

(1) Review, evaluate, perform investment reviews, suitability reviews, inquiries, or investigations, or in any other way monitor the conduct of the trustee, trust advisor, or trust protector;

(2) Make recommendations or evaluations or in any way provide advice to the trustee, trust advisor, or trust protector or consult with the trustee, trust advisor, or trust protector; or

(3) Communicate with or warn or apprise any beneficiary or third party concerning instances in which the excluded fiduciary would or might have exercised the excluded fiduciary's own discretion in a manner different from the manner directed by the trustee, trust advisor, or trust protector.

(b) Absent provisions in the trust instrument to the contrary, the actions of the excluded fiduciary pertaining to matters within the scope of the trustee, trust advisor, or trust protector's authority, including, but not limited to, confirming that the trustee, trust advisor, or trust protector's directions have been carried out and recording and reporting actions taken at the trustee, trust advisor, or trust protector's direction or other information pursuant to Section 91-8-813, shall be deemed to be administrative actions taken by the excluded fiduciary solely to allow the excluded fiduciary to perform those duties assigned to the excluded fiduciary under the terms of the trust; those administrative actions, as well as any communications made by the excluded fiduciary to the trust advisor, trust protector, or any of their agents or persons they have selected to provide services to the trust, shall not be deemed to constitute an undertaking by the excluded fiduciary to monitor the trustee, trust advisor, or trust protector or otherwise participate in actions within the

scope of the trustee's, trust advisor's, or trust protector's authority.

SECTION 102. The following shall be codified as Section 91-8-1205, Mississippi Code of 1972:

91-8-1205. **Fiduciary's liability for action or inaction of trustee, trust advisor, and trust protector.** An excluded fiduciary is not liable, either individually or as a fiduciary, for:

(1) Any loss resulting from compliance with a direction of a trustee, trust advisor, or trust protector, including, but not limited to, any loss from the trustee, trust advisor, or trust protector breaching fiduciary responsibilities or acting beyond the trustee's, trust advisor's, or trust protector's scope of authority;

(2) Any loss resulting from any action or inaction of a trustee, trust advisor, or trust protector; or

(3) Any loss that results from the failure of a trustee, trust advisor, or trust protector to take any action proposed by the excluded fiduciary where the action requires the authorization of the trustee, trust advisor, or trust protector, if an excluded fiduciary who had a duty to propose the action timely sought but failed to obtain the authorization.

SECTION 103. The following shall be codified as Section 91-8-1206, Mississippi Code of 1972:

91-8-1206. **Limitation of action against trust advisor or**

trust protector. (a) A beneficiary may not commence a proceeding against a trust advisor or trust protector for breach of trust more than one (1) year after the date the beneficiary or a representative of the beneficiary was sent a report that adequately disclosed facts indicating the existence of a potential claim for breach of trust.

(b) A report adequately discloses facts indicating the existence of a potential claim for breach of trust if it provides sufficient information so that the beneficiary or the beneficiary's representative knows of the potential claim or has sufficient information to be presumed to know of it, or to be put on notice to inquire into its existence.

(c) If subsection (a) does not apply, a judicial proceeding by a beneficiary against a trust advisor or trust protector for breach of trust must be commenced within three (3) years after the first to occur of:

- (1) The removal, resignation, or death of the trust advisor or trust protector;
- (2) The termination of the beneficiary's interest in the trust; or
- (3) The termination of the trust.

(d) A trustee may not commence a proceeding against a trust advisor or trust protector for breach of trust more than one (1) year after the date the trustee or a representative of the trustee

was sent a report that adequately disclosed facts indicating the existence of a potential claim for breach of trust.

(e) A report adequately discloses facts indicating the existence of a potential claim for breach of trust if it provides sufficient information so that the trustee or the trustee's representative knows of the potential claim or has sufficient information to be presumed to know of it, or to be put on notice to inquire into its existence.

(f) If subsection (d) does not apply, a judicial proceeding by a trustee against a trust advisor or trust protector for breach of trust must be commenced within three (3) years after the first to occur of:

(1) The removal, resignation, or death of the trust advisor or trust protector;

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

(3) The termination of the trust.

(g) A trust advisor or trust protector may not commence a proceeding against another trust advisor or another trust protector for breach of trust more than one (1) year after the date the trust advisor or trust protector or the respective representative of each was sent a report that adequately disclosed facts indicating the existence of a potential claim for breach of trust.

(h) A report adequately discloses facts indicating the existence of a potential claim for breach of trust if it provides sufficient information so that the trust advisor or trust protector or the respective representative of each knows of the potential claim or has sufficient information to be presumed to know of it, or to be put on notice to inquire into its existence.

(i) If subsection (g) does not apply, a judicial proceeding by a trust advisor or trust protector against another trust advisor or another trust protector for breach of trust must be commenced within three (3) years after the first to occur of:

- (1) The removal, resignation, or death of the other trust advisor or other trust protector;
- (2) The termination of the beneficiary's interest in the trust; or
- (3) The termination of the trust.

(j) Notwithstanding subsections (d) through (i), no trustee, trust advisor, or trust protector may commence a proceeding against a trust advisor or trust protector or another trust advisor or another trust protector if, under either subsections (a) through (c) or Section 91-8-1005(a) through (c), none of the beneficiaries may commence a proceeding against the trust advisor or trust protector for such breach of trust.

SECTION 104. The codifier is directed to codify Sections 1 through 104 of this act as Title 91, Chapter 8, Mississippi Code of 1972.

SECTION 105. Sections 91-9-1, 91-9-2, 91-9-3, 91-9-5, 91-9-7 and 91-9-9, Mississippi Code of 1972, which comprise Title 91, Chapter 9, Article 1, Trusts - General Provisions, are repealed.

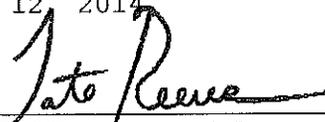
SECTION 106. Sections 91-9-101, 91-9-103, 91-9-105, 91-9-107, 91-9-109, 91-9-111, 91-9-113, 91-9-115, 91-9-117 and 91-9-119, Mississippi Code of 1972, which comprise Title 91, Chapter 9, Article 3, Uniform Trustee Powers, are repealed.

SECTION 107. Sections 91-9-201, 91-9-203, 91-9-205, 91-9-207, 91-2-209, 91-9-211 and 91-9-213, Mississippi Code of 1972, which comprise Title 91, Chapter 9, Article 5, Resignation And Succession of Trustees, are repealed.

SECTION 108. Sections 91-9-301, 91-9-303 and 91-9-305, which comprise Title 91, Chapter 9, Article 7, Removal of Trustees, are repealed.

SECTION 109. This act shall take effect and be in force from and after July 1, 2014.

PASSED BY THE SENATE
February 12, 2014



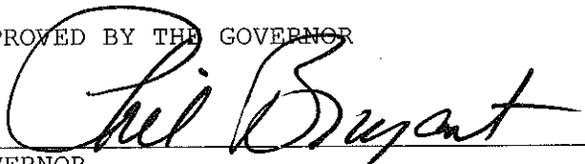
PRESIDENT OF THE SENATE

PASSED BY THE HOUSE OF REPRESENTATIVES
March 11, 2014



SPEAKER OF THE HOUSE OF REPRESENTATIVES

APPROVED BY THE GOVERNOR



GOVERNOR

3/24/2014

11:43 am