

By: Senator(s) Tindell, Gollott

To: Judiciary, Division A

COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 2727

1 AN ACT TO CREATE THE MISSISSIPPI UNIFORM TRUST CODE, TO BE
2 CODIFIED IN TITLE 91, CHAPTER 8, MISSISSIPPI CODE OF 1972, TO
3 PROVIDE FOR THE CREATION, ADMINISTRATION, MODIFICATION,
4 TERMINATION, AND VALIDITY OF TRUSTS; TO CREATE NEW SECTION
5 91-8-101, MISSISSIPPI CODE OF 1972, TO CREATE A SHORT TITLE; TO
6 CREATE NEW SECTION 91-8-102, MISSISSIPPI CODE OF 1972, TO
7 PRESCRIBE THE SCOPE OF THE ACT; TO CREATE NEW SECTION 91-8-103,
8 MISSISSIPPI CODE OF 1972, TO ENACT DEFINITIONS; TO CREATE NEW
9 SECTION 91-8-104, MISSISSIPPI CODE OF 1972, TO ENUMERATE THE
10 CIRCUMSTANCES CONSTITUTING "KNOWLEDGE"; TO CREATE NEW SECTION
11 91-8-105, MISSISSIPPI CODE OF 1972, TO CREATE DEFAULT AND
12 MANDATORY RULES; TO CREATE NEW SECTION 91-8-106, MISSISSIPPI CODE
13 OF 1972, TO PROVIDE FOR THE APPLICATION OF COMMON LAW AND
14 PRINCIPLES OF EQUITY; TO CREATE NEW SECTION 91-8-107, MISSISSIPPI
15 CODE OF 1972, TO PRESCRIBE GOVERNING LAW; TO CREATE NEW SECTION
16 91-8-108, MISSISSIPPI CODE OF 1972, TO DELINEATE THE PRINCIPAL
17 PLACE OF ADMINISTRATION; TO CREATE NEW SECTION 91-8-109,
18 MISSISSIPPI CODE OF 1972, TO PROVIDE FOR NOTICE AND WAIVER
19 THEREOF; TO CREATE NEW SECTION 91-8-110, MISSISSIPPI CODE OF 1972,
20 TO SPECIFY QUALIFIED BENEFICIARIES; TO CREATE NEW SECTION
21 91-8-111, MISSISSIPPI CODE OF 1972, TO AUTHORIZE NONJUDICIAL
22 SETTLEMENT AGREEMENTS; TO CREATE NEW SECTION 91-8-112, MISSISSIPPI
23 CODE OF 1972, TO PROVIDE RULES OF CONSTRUCTION; TO CREATE NEW
24 SECTION 91-8-201, MISSISSIPPI CODE OF 1972, TO SPECIFY THE ROLE OF
25 THE COURT; TO CREATE NEW SECTION 91-8-202, MISSISSIPPI CODE OF
26 1972, TO SPECIFY JURISDICTION; TO CREATE NEW SECTION 91-8-203,
27 MISSISSIPPI CODE OF 1972, TO DEFINE SUBJECT-MATTER JURISDICTION;
28 TO CREATE NEW SECTION 91-8-204, MISSISSIPPI CODE OF 1972, TO
29 PRESCRIBE VENUE; TO CREATE NEW SECTION 91-8-205, MISSISSIPPI CODE
30 OF 1972, TO PROVIDE FOR JUDICIAL ACCOUNTINGS AND SETTLEMENTS; TO
31 CREATE NEW SECTION 91-8-301, MISSISSIPPI CODE OF 1972, TO SPECIFY
32 WHEN REPRESENTATION IS BINDING; TO CREATE NEW SECTION 91-8-302,
33 MISSISSIPPI CODE OF 1972, TO PROVIDE WHEN THE HOLDER MAY BIND
34 OTHERS; TO CREATE NEW SECTION 91-8-303, MISSISSIPPI CODE OF 1972,



35 TO PROVIDE FOR REPRESENTATION BY FIDUCIARIES AND PARENTS; TO
36 CREATE NEW SECTION 91-8-304, MISSISSIPPI CODE OF 1972, TO PROVIDE
37 FOR REPRESENTATION BY PERSONS WITH SIMILAR INTERESTS; TO CREATE
38 NEW SECTION 91-8-305, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR
39 APPOINTMENT OF REPRESENTATIVES; TO CREATE NEW SECTION 91-8-401,
40 MISSISSIPPI CODE OF 1972, TO PROVIDE METHODS FOR CREATING TRUSTS;
41 TO CREATE NEW SECTION 91-8-402, MISSISSIPPI CODE OF 1972, TO
42 SPECIFY REQUIREMENTS; TO CREATE NEW SECTION 91-8-403, MISSISSIPPI
43 CODE OF 1972, TO PROVIDE FOR FOREIGN TRUSTS; TO CREATE NEW SECTION
44 91-8-404, MISSISSIPPI CODE OF 1972, TO REQUIRE A LAWFUL PURPOSE;
45 TO CREATE NEW SECTION 91-8-405, MISSISSIPPI CODE OF 1972, TO ALLOW
46 COURT SELECTION OF A CHARITABLE PURPOSE; TO CREATE NEW SECTION
47 91-8-406, MISSISSIPPI CODE OF 1972, TO VOID A TRUST CREATED UNDER
48 DURESS; TO CREATE NEW SECTION 91-8-407, MISSISSIPPI CODE OF 1972,
49 TO ALLOW AN ORAL TRUST; TO CREATE NEW SECTION 91-8-408,
50 MISSISSIPPI CODE OF 1972, TO PROVIDE FOR TRUSTS FOR ANIMALS; TO
51 CREATE NEW SECTION 91-8-409, MISSISSIPPI CODE OF 1972, TO PROVIDE
52 FOR NONCHARITABLE TRUSTS LACKING A DISCERNABLE BENEFICIARY; TO
53 CREATE NEW SECTION 91-8-410, MISSISSIPPI CODE OF 1972, TO PROVIDE
54 FOR MODIFICATION OR TERMINATION OF TRUSTS; TO CREATE NEW SECTION
55 91-8-411, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR MODIFICATION OR
56 TERMINATION OF NONCHARITABLE IRREVOCABLE TRUSTS BY CONSENT; TO
57 CREATE NEW SECTION 91-8-412, MISSISSIPPI CODE OF 1972, TO PROVIDE
58 FOR MODIFICATION OR TERMINATION DUE TO UNFORESEEN CIRCUMSTANCES;
59 TO CREATE NEW SECTION 91-8-413, MISSISSIPPI CODE OF 1972, TO
60 PROVIDE FOR INTERPRETATION ACCORDING TO THE SETTLOR'S INTENT; TO
61 CREATE NEW SECTION 91-8-414, MISSISSIPPI CODE OF 1972, TO PROVIDE
62 FOR MODIFICATION OR TERMINATION OF AN UNECONOMIC TRUST; TO CREATE
63 NEW SECTION 91-8-415, MISSISSIPPI CODE OF 1972, TO ALLOW
64 REFORMATION TO CORRECT MISTAKES; TO CREATE NEW SECTION 91-8-416,
65 MISSISSIPPI CODE OF 1972, TO ALLOW MODIFICATION TO OBTAIN TAX
66 OBJECTIVES; TO CREATE NEW SECTION 91-8-417, MISSISSIPPI CODE OF
67 1972, TO ALLOW COMBINATION AND DIVISION OF TRUSTS; TO CREATE NEW
68 SECTION 91-8-601, MISSISSIPPI CODE OF 1972, TO SPECIFY REQUIRED
69 CAPACITY; TO CREATE NEW SECTION 91-8-602, MISSISSIPPI CODE OF
70 1972, TO PROVIDE FOR REVOCATION OR AMENDMENT OF REVOCABLE TRUST;
71 TO CREATE NEW SECTION 91-8-603, MISSISSIPPI CODE OF 1972, TO
72 PROVIDE SETTLOR'S POWERS; TO CREATE NEW SECTION 91-8-604,
73 MISSISSIPPI CODE OF 1972, TO PLACE A LIMITATION ON AN ACTION TO
74 CONTEST VALIDITY; TO CREATE NEW SECTION 91-8-701, MISSISSIPPI CODE
75 OF 1972, TO ALLOW ACCEPTANCE OR DECLINE OF TRUSTEESHIP; TO CREATE
76 NEW SECTION 91-8-702, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR A
77 TRUSTEE'S BOND; TO CREATE NEW SECTION 91-8-703, MISSISSIPPI CODE
78 OF 1972, TO PROVIDE FOR COTRUSTEES; TO CREATE NEW SECTION
79 91-8-704, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR VACANCIES AND
80 APPOINTMENTS; TO CREATE NEW SECTION 91-8-705, MISSISSIPPI CODE OF
81 1972, TO PROVIDE FOR RESIGNATION OF TRUSTEES; TO CREATE NEW
82 SECTION 91-8-706, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR REMOVAL
83 OF A TRUSTEE; TO CREATE NEW SECTION 91-8-707, MISSISSIPPI CODE OF
84 1972, TO PROVIDE FOR DELIVERY OF PROPERTY BY A FORMER TRUSTEE; TO
85 CREATE NEW SECTION 91-8-708, MISSISSIPPI CODE OF 1972, TO PROVIDE



86 FOR THE COMPENSATION OF TRUSTEE, TRUST ADVISORS AND TRUST
87 PROTECTORS; TO CREATE NEW SECTION 91-8-709, MISSISSIPPI CODE OF
88 1972, TO PROVIDE FOR REIMBURSEMENT; TO CREATE NEW SECTION
89 91-8-710, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR EXCLUDED
90 FIDUCIARIES OF DIRECTED TRUSTS; TO CREATE NEW SECTION 91-8-711,
91 MISSISSIPPI CODE OF 1972, TO ALLOW A FIDUCIARY TO ACCEPT OR
92 DECLINE SERVING A DIRECTED TRUST; TO CREATE NEW SECTION 91-8-712,
93 MISSISSIPPI CODE OF 1972, TO PROVIDE THE FIDUCIARY'S BOND FOR A
94 DIRECTED TRUST; TO CREATE NEW SECTION 91-8-713, MISSISSIPPI CODE
95 OF 1972, TO PROVIDE FOR A VACANCY IN A DIRECTED TRUST; TO CREATE
96 NEW SECTION 91-8-714, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR THE
97 RESIGNATION OF THE FIDUCIARY OF A DIRECTED TRUST; TO CREATE NEW
98 SECTION 91-8-715, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR THE
99 REMOVAL OF A FIDUCIARY OF A DIRECTED TRUST; TO CREATE NEW SECTION
100 91-8-801, MISSISSIPPI CODE OF 1972, TO SPECIFY THE DUTY OF A TRUST
101 ADMINISTRATOR; TO CREATE NEW SECTION 91-8-802, MISSISSIPPI CODE OF
102 1972, TO REQUIRE THE DUTY OF LOYALTY; TO CREATE NEW SECTION
103 91-8-803, MISSISSIPPI CODE OF 1972, TO REQUIRE IMPARTIALITY; TO
104 CREATE NEW SECTION 91-8-804, MISSISSIPPI CODE OF 1972, TO REQUIRE
105 PRUDENCE; TO CREATE NEW SECTION 91-8-805, MISSISSIPPI CODE OF
106 1972, TO PROVIDE FOR PAYMENT OF COSTS; TO CREATE NEW SECTION
107 91-8-806, MISSISSIPPI CODE OF 1972, TO REQUIRE THE TRUSTEE'S USE
108 OF SPECIAL SKILLS; TO CREATE NEW SECTION 91-8-807, MISSISSIPPI
109 CODE OF 1972, TO ALLOW DELEGATION BY A TRUSTEE; TO CREATE NEW
110 SECTION 91-8-808, MISSISSIPPI CODE OF 1972, TO SPECIFY WHEN A
111 SETTLOR HAS THE POWER TO DIRECT; TO CREATE NEW SECTION 91-8-809,
112 MISSISSIPPI CODE OF 1972, TO REQUIRE CONTROL AND PROTECTION OF
113 TRUST PROPERTY; TO CREATE NEW SECTION 91-8-810, MISSISSIPPI CODE
114 OF 1972, TO REQUIRE RECORDKEEPING AND IDENTIFICATION OF TRUST
115 PROPERTY; TO CREATE NEW SECTION 91-8-811, MISSISSIPPI CODE OF
116 1972, TO PROVIDE FOR ENFORCEMENT AND DEFENSE OF CLAIMS; TO CREATE
117 NEW SECTION 91-8-812, MISSISSIPPI CODE OF 1972, TO REQUIRE
118 COLLECTION OF PROPERTY; TO CREATE NEW SECTION 91-8-813,
119 MISSISSIPPI CODE OF 1972, TO IMPOSE A DUTY TO INFORM AND REPORT;
120 TO CREATE NEW SECTION 91-8-814, MISSISSIPPI CODE OF 1972, TO
121 IMPOSE STANDARDS ON THE EXERCISE OF DISCRETIONARY POWERS; TO
122 CREATE NEW SECTION 91-8-815, MISSISSIPPI CODE OF 1972, TO SPECIFY
123 THE GENERAL POWERS OF A TRUSTEE; TO CREATE NEW SECTION 91-8-816,
124 MISSISSIPPI CODE OF 1972, TO SPECIFY THE SPECIFIC POWERS OF A
125 TRUSTEE; TO CREATE NEW SECTION 91-8-817, MISSISSIPPI CODE OF 1972,
126 TO PROVIDE FOR DISTRIBUTION UPON TERMINATION; TO CREATE NEW
127 SECTION 91-8-901, MISSISSIPPI CODE OF 1972, TO INCORPORATE THE
128 PRUDENT INVESTOR ACT BY REFERENCE; TO CREATE NEW SECTION
129 91-8-1001, MISSISSIPPI CODE OF 1972, TO PROVIDE REMEDIES FOR
130 BREACH OF TRUST; TO CREATE NEW SECTION 91-8-1002, MISSISSIPPI CODE
131 OF 1972, TO PROVIDE DAMAGES FOR BREACH OF TRUST; TO CREATE NEW
132 SECTION 91-8-1003, MISSISSIPPI CODE OF 1972, TO ELIMINATE DAMAGES
133 IN ABSENCE OF BREACH; TO CREATE NEW SECTION 91-8-1004, MISSISSIPPI
134 CODE OF 1972, TO PROVIDE FOR ATTORNEY'S FEES AND COSTS; TO CREATE
135 NEW SECTION 91-8-1005, MISSISSIPPI CODE OF 1972, TO ENACT A
136 LIMITATION OF ACTION AGAINST A TRUSTEE; TO CREATE NEW SECTION



137 91-8-1006, MISSISSIPPI CODE OF 1972, TO CREATE IMMUNITY FOR
138 RELIANCE ON THE TRUST INSTRUMENT; TO CREATE NEW SECTION 91-8-1007,
139 MISSISSIPPI CODE OF 1972, TO CREATE IMMUNITY FOR CERTAIN OTHER
140 EVENTS AFFECTING ADMINISTRATION; TO CREATE NEW SECTION 91-8-1008,
141 MISSISSIPPI CODE OF 1972, TO PROVIDE FOR A TRUSTEE'S EXCULPATION;
142 TO CREATE NEW SECTION 91-8-1009, MISSISSIPPI CODE OF 1972, TO
143 PROVIDE FOR A BENEFICIARY'S CONSENT, RELEASE OR RATIFICATION; TO
144 CREATE NEW SECTION 91-8-1010, MISSISSIPPI CODE OF 1972, TO LIMIT A
145 TRUSTEE'S PERSONAL LIABILITY; TO CREATE NEW SECTION 91-8-1011,
146 MISSISSIPPI CODE OF 1972, TO SPECIFY A TRUSTEE'S INTEREST AS A
147 GENERAL PARTNER; TO CREATE NEW SECTION 91-8-1012, MISSISSIPPI CODE
148 OF 1972, TO PROVIDE PROTECTION FOR A PERSON DEALING WITH A
149 TRUSTEE; TO CREATE NEW SECTION 91-8-1013, MISSISSIPPI CODE OF
150 1972, TO PROVIDE FOR CERTIFICATION OF A TRUST; TO CREATE NEW
151 SECTION 91-8-1014, MISSISSIPPI CODE OF 1972, TO ALLOW ENFORCEMENT
152 OF A NO-CONTEST CLAUSE; TO CREATE NEW SECTION 91-8-1101,
153 MISSISSIPPI CODE OF 1972, TO PROVIDE FOR UNIFORMITY IN APPLICATION
154 AND CONSTRUCTION; TO CREATE NEW SECTION 91-8-1102, MISSISSIPPI
155 CODE OF 1972, TO SPECIFY THE RELATION OF THE ACT TO THE ELECTRONIC
156 SIGNATURES ACT; TO CREATE NEW SECTION 91-8-1103, MISSISSIPPI CODE
157 OF 1972, TO PROVIDE FOR SEVERABILITY; TO CREATE NEW SECTION
158 91-8-1106, MISSISSIPPI CODE OF 1972, TO MAKE TRANSITION
159 PROVISIONS; TO CREATE NEW SECTION 91-8-1107, MISSISSIPPI CODE OF
160 1972, TO PLACE LIMITATIONS ON SETTLORS OF IRREVOCABLE TRUSTS; TO
161 CREATE NEW SECTION 91-8-1108, MISSISSIPPI CODE OF 1972, TO PROVIDE
162 FACTORS TO BE CONSIDERED IN CERTAIN CHALLENGES; TO CREATE NEW
163 SECTION 91-8-1109, MISSISSIPPI CODE OF 1972, TO PROVIDE SPECIAL
164 PROTECTIONS FOR TRUSTS FOR THE DISABLED; TO CREATE NEW SECTION
165 91-8-1201, MISSISSIPPI CODE OF 1972, TO SPECIFY THE POWERS OF
166 TRUST ADVISORS AND TRUST PROTECTORS; TO CREATE NEW SECTION
167 91-8-1202, MISSISSIPPI CODE OF 1972, TO SPECIFY THE FIDUCIARY DUTY
168 OF TRUST ADVISORS AND TRUST PROTECTORS; TO CREATE NEW SECTION
169 91-8-1203, MISSISSIPPI CODE OF 1972, TO SUBJECT TRUST ADVISORS AND
170 PROTECTORS TO COURT JURISDICTION; TO CREATE NEW SECTION 91-8-1204,
171 MISSISSIPPI CODE OF 1972, TO LIMIT THE DUTY OF REVIEW OF AN
172 EXCLUDED FIDUCIARY; TO CREATE NEW SECTION 91-8-1205, MISSISSIPPI
173 CODE OF 1972, TO SPECIFY THE FIDUCIARY'S LIABILITY; TO CREATE NEW
174 SECTION 91-8-1206, MISSISSIPPI CODE OF 1972, TO CREATE A
175 LIMITATION OF LIABILITY FOR A TRUST ADVISOR OR PROTECTOR; TO
176 REPEAL SECTIONS 91-9-1, 91-9-2, 91-9-3, 91-9-5, 91-9-7 AND 91-9-9,
177 MISSISSIPPI CODE OF 1972, WHICH CONSTITUTE TITLE 91, CHAPTER 9,
178 ARTICLE 1, TRUSTS - GENERAL PROVISIONS; TO REPEAL SECTIONS
179 91-9-101, 91-9-103, 91-9-105, 91-9-107, 91-9-109, 91-9-111,
180 91-9-113, 91-9-115, 91-9-117 AND 91-9-119, MISSISSIPPI CODE OF
181 1972, WHICH CONSTITUTE TITLE 91, CHAPTER 9, ARTICLE 3, UNIFORM
182 TRUSTEE POWERS; TO REPEAL SECTIONS 91-9-201, 91-9-203, 91-9-205,
183 91-9-207, 91-2-209, 91-9-211, 91-9-213, MISSISSIPPI CODE OF 1972,
184 WHICH CONSTITUTE TITLE 91, CHAPTER 9, ARTICLE 5, RESIGNATION AND
185 SUCCESSION OF TRUSTEES; TO REPEAL SECTIONS 91-9-301, 91-9-303 AND
186 91-9-305, MISSISSIPPI CODE OF 1972, WHICH CONSTITUTE TITLE 91,



187 CHAPTER 9, ARTICLE 7, REMOVAL OF TRUSTEES; AND FOR RELATED
188 PURPOSES.

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

190 **ARTICLE 1**

191 **GENERAL PROVISIONS AND DEFINITIONS**

192 **SECTION 1.** The following shall be codified as Section
193 91-8-101, Mississippi Code of 1972:

194 91-8-101. **Short title.** This chapter may be cited as the
195 Mississippi Uniform Trust Code.

196 **SECTION 2.** The following shall be codified as Section
197 91-8-102, Mississippi Code of 1972:

198 91-8-102. **Scope.** This chapter applies to express trusts,
199 charitable or noncharitable, and trusts created pursuant to a
200 statute, judgment, or decree that requires the trust to be
201 administered in the manner of an express trust.

202 **SECTION 3.** The following shall be codified as Section
203 91-8-103, Mississippi Code of 1972:

204 91-8-103. **Definitions.** In this chapter:

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

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



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

216 (4) "Beneficiary" means a person that:

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

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

221 (5) "Beneficiary surrogate" means a person, other than
222 a trustee, designated by the settlor in the trust instrument or in
223 a writing delivered to the trustee, or designated by a trust
224 protector or trust advisor pursuant to the terms of the trust
225 instrument to receive notices, information, and reports otherwise
226 required to be provided to a beneficiary under Section 91-8-813(a)
227 and (b).

228 (6) "Charitable trust" means a trust, or portion of a
229 trust, created for a charitable purpose described in Section
230 91-8-405(a).

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

234 (8) "Directed trust" means a trust where through the
235 terms of the trust, one or more persons are given the authority to
236 direct or consent to a fiduciary's actual or proposed investment



237 decision, distribution decision, or any other decision of the
238 fiduciary.

239 (9) "Distribution interest" means:

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

244 (B) A distribution interest is classified as
245 either a mandatory interest, a support interest or a discretionary
246 interest; and although not the exclusive means to create each such
247 respective distribution interest, absent clear and convincing
248 evidence to the contrary, use of the example language accompanying
249 the following definitions of each such respective distribution
250 interest results in the indicated classification of distribution
251 interest:

252 (i) A mandatory interest means a distribution
253 interest in which the timing of any distribution must occur within
254 one (1) year from the date the right to the distribution arises
255 and the trustee has no discretion in determining whether a
256 distribution shall be made or the amount of such distribution;
257 example distribution language indicating a mandatory interest
258 includes, but is not limited to:

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



261 b. One Hundred Thousand Dollars
262 (\$100,000.00) a year shall be distributed to a named beneficiary;

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

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

271 b. Notwithstanding the distribution
272 language used, if a trust instrument containing such distribution
273 language specifically provides that the trustee exercise
274 discretion in a reasonable manner with regard to a discretionary
275 interest, then notwithstanding any other provision of this
276 subparagraph defining distribution interests, the distribution
277 interest shall be classified as a support interest;

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



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

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

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

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

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

299 f. A discretionary interest may also be
300 evidenced by:

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

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

307 g. An interest that includes mandatory
308 distribution language such as "shall" but is subsequently



309 qualified by discretionary distribution language shall be
310 classified as a discretionary interest and not as a support or a
311 mandatory interest;

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

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

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

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

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

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



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

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

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

339 (12) "Fiduciary" means:

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

346 (B) For purposes of subparagraph (A), an agency
347 agreement includes, but is not limited to, any agreement under
348 which any delegation is made, either pursuant to Section 91-8-807
349 or by anyone holding a power or duty pursuant to Article 12;

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

353 (13) "Guardian" means a person appointed by the court
354 pursuant to Section 93-13-13 or a parent to make decisions
355 regarding the support, care, education, health, and welfare of a



356 minor or adult individual. The term does not include a guardian
357 ad litem.

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

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

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

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

369 (18) "Power of appointment" means:

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

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

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



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

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

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

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

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

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

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

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

402 (25) "Settlor" means a person, including a testator,
403 who creates, or contributes property to, a trust. If more than
404 one (1) person creates or contributes property to a trust, each
405 person is a settlor of the portion of the trust property



406 attributable to that person's contribution except to the extent
407 another person has the power to revoke or withdraw that portion.

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

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

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

421 (29) "Terms of a trust" means the manifestation of the
422 settlor's intent regarding a trust's provisions as expressed in
423 the trust instrument or as may be established by other evidence
424 that would be admissible in a judicial proceeding.

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

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



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

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

434 **SECTION 4.** The following shall be codified as Section
435 91-8-104, Mississippi Code of 1972:

436 91-8-104. **Knowledge.** (a) Subject to subsection (b), a
437 person has knowledge of a fact if the person:

438 (1) Has actual knowledge of it;

439 (2) Has received a notice or notification of it; or

440 (3) From all the facts and circumstances known to the
441 person at the time in question, has reason to know it.

442 (b) An organization that conducts activities through
443 employees has notice or knowledge of a fact involving a trust only
444 from the time the information was received by an employee having
445 responsibility to act for the trust, or would have been brought to
446 the employee's attention if the organization had exercised
447 reasonable diligence. An organization exercises reasonable
448 diligence if it maintains reasonable routines for communicating
449 significant information to the employee having responsibility to
450 act for the trust and there is reasonable compliance with the
451 routines. Reasonable diligence does not require an employee of
452 the organization to communicate information unless the
453 communication is part of the individual's regular duties or the



454 individual knows a matter involving the trust would be materially
455 affected by the information.

456 **SECTION 5.** The following shall be codified as Section
457 91-8-105, Mississippi Code of 1972:

458 91-8-105. **Default and mandatory rules.** (a) Except as
459 otherwise provided in the terms of the trust, this chapter governs
460 the duties and powers of a trustee or any other fiduciary under
461 this chapter, relations among trustees and such other fiduciaries,
462 and the rights and interests of a beneficiary. The terms of a
463 trust may expand, restrict, eliminate, or otherwise vary the
464 duties and powers of a trustee, any such other fiduciary,
465 relations among any of them, and the rights and interests of a
466 beneficiary; however, nothing contained in this subsection shall
467 be construed to override or nullify the provisions of subsection
468 (b). The rule of statutory construction that statutes in
469 derogation of the common law are to be strictly construed shall
470 have no application to this section. Except as restricted by
471 subsection (b), pursuant to this section, courts shall give
472 maximum effect to the principal of freedom of disposition and to
473 the enforceability of trust instruments.

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

476 (1) The requirements for creating a trust;



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

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

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

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

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

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

495 (8) Subject to subsection (d), the duty under Section
496 91-8-813(b) to notify beneficiaries of an irrevocable trust
497 (including anyone who holds of a power of appointment) who have
498 attained twenty-five (25) years of age that the trust has been
499 established as set forth in that Section 91-8-813(b);

500 (9) Subject to subsection (d), the duty under Section
501 91-8-813(a) (1) and (2) to keep the beneficiaries (including anyone



502 who holds a power of appointment) informed and to respond to the
503 request of a beneficiary of an irrevocable trust for trustee's
504 reports and other information reasonably related to the
505 administration of the trust;

506 (10) The effect of an exculpatory term under Section
507 91-8-1008;

508 (11) The rights under Sections 91-8-1010 through
509 91-8-1013 of a person other than a trustee or beneficiary;

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

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

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

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

521 (d) Notwithstanding subsection (b) (8) and (9) of this
522 section, the duties of a trustee to give notice, information and
523 reports under Section 91-8-813(a) and (b) may be waived or
524 modified in the trust instrument or by the settlor of the trust,
525 or a trust protector or trust advisor that holds the power to so



526 direct, directs otherwise in a writing delivered to the trustee in
527 any of the following ways:

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

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

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

538 **SECTION 6.** The following shall be codified as Section
539 91-8-106, Mississippi Code of 1972:

540 91-8-106. **Common law of trusts; principles of equity.** The
541 common law of trusts and principles of equity supplement this
542 chapter, except to the extent modified by this chapter or another
543 statute of this state.

544 **SECTION 7.** The following shall be codified as Section
545 91-8-107, Mississippi Code of 1972:

546 91-8-107. **Governing law.** (a) The validity, construction
547 and administration of a trust are determined by the law of the
548 jurisdiction designated in the terms of the trust instrument.

549 (b) In the absence of a controlling designation in the terms
550 of the trust, the laws of the jurisdiction where the trust was



551 executed determine the validity of the trust, construction of the
552 trust instrument and the laws of descent, while the laws of the
553 principal place of administration determine the administration of
554 the trust.

555 **SECTION 8.** The following shall be codified as Section
556 91-8-108, Mississippi Code of 1972:

557 91-8-108. **Principal place of administration.** (a) Without
558 precluding other means for establishing a sufficient connection
559 with the designated jurisdiction, the terms of a trust designating
560 the principal place of administration are valid and controlling
561 if:

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

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

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

569 (B) Wholly or partly preparing or arranging for
570 the preparation, either on an exclusive or a nonexclusive basis,
571 in the designated jurisdiction of an income tax return that must
572 be filed for the trust; or

573 (3) Some or all of the trust assets are deposited in
574 the designated jurisdiction or physical evidence of the assets is
575 held in the designated jurisdiction and the trust is being



576 administered by a person defined in subsection (a)(1). For
577 purposes of this subsection (a)(3), "deposited in the designated
578 jurisdiction," includes assets being held in any checking account,
579 time deposit, certificate of deposit, brokerage account, trust
580 company fiduciary account, or other similar account or deposit
581 that is located in the designated jurisdiction.

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

590 (c) A trustee shall administer the trust at a place
591 appropriate to its purposes, its administration, and the interests
592 of the beneficiaries; however, a trustee shall not be required, in
593 the absence of a court order, to transfer the trust's principal
594 place of administration to another state or to a jurisdiction
595 outside the United States even though such other state or
596 jurisdiction outside the United States could also be appropriate
597 to its purposes, its administration, and the interests of the
598 beneficiaries.

599 (d) Without precluding the right of the court to order,
600 approve, or disapprove a transfer, the trustee may transfer the



601 trust's principal place of administration to another state or to a
602 jurisdiction outside the United States, if the transfer is to a
603 place appropriate to the trust's purposes, its administration, and
604 the interests of the beneficiaries.

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

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

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

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

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

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

621 (f) The authority of a trustee under this section to
622 transfer a trust's principal place of administration terminates if
623 a majority of the qualified beneficiaries described in Section
624 91-8-103 notify the trustee of an objection to the proposed
625 transfer on or before the date specified in the notice.



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

630 **SECTION 9.** The following shall be codified as Section
631 91-8-109, Mississippi Code of 1972:

632 91-8-109. **Methods and waiver of notice.** (a) Notice to a
633 person under this chapter or the sending of a document to a person
634 under this chapter must be accomplished in a manner reasonably
635 suitable under the circumstances and likely to result in receipt
636 of the notice or document. Permissible methods of notice or for
637 sending a document include first-class mail, personal delivery,
638 delivery to the person's last-known place of residence or place of
639 business, or a properly directed electronic message.

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

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

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

649 **SECTION 10.** The following shall be codified as Section
650 91-8-110, Mississippi Code of 1972:



651 91-8-110. **Others treated as qualified beneficiaries.** A
652 charitable organization expressly designated to receive
653 distributions under the terms of a charitable trust has the rights
654 of a qualified beneficiary under this chapter if the charitable
655 organization, on the date the charitable organization's
656 qualification is being determined:

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

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

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

666 **SECTION 11.** The following shall be codified as Section
667 91-8-111, Mississippi Code of 1972:

668 91-8-111. **Nonjudicial settlement agreements.** (a) Except as
669 otherwise provided in subsection (b), the trustee and qualified
670 beneficiaries may enter into a binding nonjudicial settlement
671 agreement with respect to any matter involving a trust.

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



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

678 (1) The interpretation or construction of the terms of
679 the trust;

680 (2) The approval of a trustee's report or accounting;

681 (3) Direction to a trustee to refrain from performing a
682 particular act or the grant to a trustee of any necessary or
683 desirable power;

684 (4) The resignation or appointment of a trustee and the
685 determination of a trustee's compensation;

686 (5) Transfer of a trust's principal place of
687 administration;

688 (6) Liability of a trustee for an action relating to
689 the trust;

690 (7) The extent or waiver of bond of a trustee;

691 (8) The governing law of the trust; and

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

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

699 **SECTION 12.** The following shall be codified as Section
700 91-8-112, Mississippi Code of 1972:



701 91-8-112. **Rules of construction.** The rules of construction
702 that apply in this state to the interpretation of and disposition
703 of property by will also apply as appropriate to the
704 interpretation of the terms of a trust and the disposition of the
705 trust property.

706 **ARTICLE 2**

707 **JUDICIAL PROCEEDINGS**

708 **SECTION 13.** The following shall be codified as Section
709 91-8-201, Mississippi Code of 1972:

710 91-8-201. **Role of court in administration of trust.** (a)
711 The court may intervene in the administration of a trust to the
712 extent its jurisdiction is invoked by an interested person or as
713 provided by law.

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

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

- 719 (1) Request instructions;
- 720 (2) Determine the existence or nonexistence of any
- 721 immunity, power, privilege, duty or right;
- 722 (3) Approve a nonjudicial settlement;
- 723 (4) Interpret or construe the terms of the trust;
- 724 (5) Determine the validity of a trust or of any of its
- 725 terms;



726 (6) Approve a trustee's report or accounting or compel
727 a trustee to report or account;

728 (7) Direct a trustee to refrain from performing a
729 particular act or grant to a trustee any necessary or desirable
730 power;

731 (8) Review the actions or approve the proposed actions
732 of a trustee, including the exercise of a discretionary power;

733 (9) Accept the resignation of a trustee;

734 (10) Appoint or remove a trustee;

735 (11) Determine a trustee's compensation;

736 (12) Transfer a trust's principal place of
737 administration or a trust's property to another jurisdiction;

738 (13) Determine the liability of a trustee for an action
739 relating to the trust and compel redress of a breach of trust by
740 any available remedy;

741 (14) Modify or terminate a trust;

742 (15) Combine trusts or divide a trust;

743 (16) Determine liability of a trust for debts of a
744 beneficiary and living settlor;

745 (17) Determine liability of a trust for debts, expenses
746 of administration, and statutory allowances chargeable against the
747 estate of a deceased settlor;

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



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

753 **SECTION 14.** The following shall be codified as Section
754 91-8-202, Mississippi Code of 1972:

755 91-8-202. **Jurisdiction over trustee and beneficiary.** (a)
756 By accepting the trusteeship of a trust having its principal place
757 of administration in this state or by moving the principal place
758 of administration to this state, the trustee submits personally to
759 the jurisdiction of the courts of this state regarding any matter
760 involving the trust.

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

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

771 **SECTION 15.** The following shall be codified as Section
772 91-8-203, Mississippi Code of 1972:

773 91-8-203. **Subject-matter jurisdiction.** (a) Except as
774 provided in subsections (b) and (c), the chancery court has



775 exclusive jurisdiction of proceedings in this state brought by a
776 trustee or beneficiary concerning the administration of a trust.

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

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

783 **SECTION 16.** The following shall be codified as Section
784 91-8-204, Mississippi Code of 1972:

785 91-8-204. **Venue.** (a) Except as otherwise provided in
786 subsection (b), venue for a judicial proceeding involving a trust
787 is in the county of this state in which the trust's principal
788 place of administration is or will be located and, if the trust is
789 created by will and the estate is not yet closed, in the county in
790 which the decedent's estate is being administered.

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

797 **SECTION 17.** The following shall be codified as Section
798 91-8-205, Mississippi Code of 1972:



799 91-8-205. **Judicial accountings and settlements.** (a) A
800 trustee may file an accounting of the trustee's administration of
801 a trust in court at any time and seek a partial or final
802 settlement thereof or, upon petition of an interested party, a
803 court may order a trustee to render an accounting of the trustee's
804 administration of a trust and require a partial or final
805 settlement thereof. Notice of such judicial proceeding shall be
806 provided to the trustee and each beneficiary, or representative
807 thereof pursuant to Article 3, as provided by the applicable rules
808 of civil procedure.

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

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

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

821 (3) The accounting, to the extent feasible, must
822 identify and value trust assets on hand at the close of the
823 accounting period. For each asset or class of assets reasonably



824 capable of valuation, the accounting shall contain two (2) values,
825 (A) the asset acquisition value or carrying value, and (B) the
826 estimated current value, if feasible. The accounting must
827 identify each known noncontingent liability with an estimated
828 current amount of the liability if known.

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

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

836 (c) Any order or judgment of the court on such accounting
837 and partial or final settlement shall be final and conclusive as
838 to all matters occurring during the accounting period, and appeals
839 therefrom shall and must be taken in the manner provided for from
840 any other final judgment of the court.

841 **ARTICLE 3**

842 **REPRESENTATION**

843 **SECTION 18.** The following shall be codified as Section
844 91-8-301, Mississippi Code of 1972:

845 91-8-301. **Representation: basic effect.** (a) Notice to a
846 person who may represent and bind another person under this
847 article has the same effect as if notice were given directly to
848 the other person.



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

854 (c) Except as otherwise provided in Sections 91-8-411 and
855 91-8-602, a person who under this article may represent a settlor
856 who lacks capacity may receive notice and give a binding consent
857 on the settlor's behalf.

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

861 **SECTION 19.** The following shall be codified as Section
862 91-8-302, Mississippi Code of 1972:

863 91-8-302. **Representation by holder of power of appointment.**
864 To the extent there is no material conflict of interest between
865 the holder of a power of appointment and the persons represented
866 with respect to the particular question or dispute, the holder may
867 represent and bind persons whose interests, as permissible
868 appointees, takers in default, or otherwise, are subject to the
869 power.

870 **SECTION 20.** The following shall be codified as Section
871 91-8-303, Mississippi Code of 1972:

872 91-8-303. **Representation by fiduciaries and parents.** To the
873 extent there is no material conflict of interest between the



874 representative and the person represented or among those being
875 represented with respect to a particular question or dispute:

876 (1) A conservator or guardian may represent and bind
877 the estate that the conservator or guardian controls;

878 (2) A conservator or guardian may represent and bind
879 the ward if a conservator or guardian of the ward's estate has not
880 been appointed;

881 (3) An agent having authority to act with respect to
882 the particular question or dispute may represent and bind the
883 principal;

884 (4) A trustee may represent and bind the beneficiaries
885 of the trust;

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

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

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

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



898 **SECTION 21.** The following shall be codified as Section
899 91-8-304, Mississippi Code of 1972:

900 91-8-304. **Representation by person having substantially**
901 **identical interest.** (a) Unless otherwise represented, a minor,
902 incapacitated, or unborn individual, or a person whose identity or
903 location is unknown and not reasonably ascertainable, may be
904 represented by and bound by another having a substantially
905 identical interest with respect to the particular question or
906 dispute, but only to the extent there is no material conflict of
907 interest between the representative and the person represented.

908 (b) Unless otherwise represented, whenever survivorship of
909 another person is an express or implied condition of receiving
910 property from a trust, the successor contingent remainder
911 beneficiary may be represented and bound by the presumptive
912 remainder beneficiary upon whose death the rights of the successor
913 contingent remainder beneficiary depend, but only to the extent
914 there is no material conflict of interest between the presumptive
915 remainder beneficiary and the successor contingent remainder
916 beneficiary.

917 **SECTION 22.** The following shall be codified as Section
918 91-8-305, Mississippi Code of 1972:

919 91-8-305. **Appointment of representative.** (a) If the court
920 determines that an interest is not represented under this article,
921 or that the otherwise available representation might be
922 inadequate, the court may appoint a guardian ad litem or other



923 representative to receive notice, give consent, and otherwise
924 represent, bind, and act on behalf of a minor, incapacitated, or
925 unborn individual, or a person whose identity or location is
926 unknown. A guardian ad litem or other representative may be
927 appointed to represent several persons or interests.

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

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

935 **ARTICLE 4**

936 **CREATION, VALIDITY, MODIFICATION, AND TERMINATION OF TRUST**

937 **SECTION 23.** The following shall be codified as Section

938 91-8-401, Mississippi Code of 1972:

939 91-8-401. **Methods of creating trust.** A trust may be created
940 by:

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

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

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



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

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

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

964 **SECTION 24.** The following shall be codified as Section
965 91-8-402, Mississippi Code of 1972:

966 91-8-402. **Requirements for creation.** (a) A trust is
967 created only if:

968 (1) The settlor has capacity to create a trust;
969 (2) The settlor indicates an intention to create the
970 trust;

971 (3) The trust has a definite beneficiary or is:

972 (A) A charitable trust;



973 (B) A trust for the care of an animal, as provided
974 in Section 91-8-408; or

975 (C) A trust for a noncharitable purpose, as
976 provided in Section 91-8-409;

977 (4) The trustee has duties to perform; and

978 (5) The same person is not the sole trustee and sole
979 beneficiary.

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

983 (c) A power in a trustee to select a beneficiary from an
984 indefinite class is valid. If the power is not exercised within a
985 reasonable time, the power fails and the property subject to the
986 power passes to the persons who would have taken the property had
987 the power not been conferred.

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

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

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

994 **SECTION 25.** The following shall be codified as Section
995 91-8-403, Mississippi Code of 1972:

996 91-8-403. **Trusts created in other jurisdictions.** A trust
997 not created by will is validly created if its creation complies



998 with the law of the jurisdiction in which the trust instrument was
999 executed, or the law of the jurisdiction in which, at the time of
1000 creation:

1001 (1) The settlor was domiciled, had a place of abode, or
1002 was a national;

1003 (2) A trustee was domiciled or had a place of business;
1004 or

1005 (3) Any trust property was located.

1006 **SECTION 26.** The following shall be codified as Section
1007 91-8-404, Mississippi Code of 1972:

1008 91-8-404. **Trust purposes.** A trust may be created only to
1009 the extent its purposes are lawful and possible to achieve. A
1010 trust and its terms must be for the benefit of its beneficiaries
1011 as the interests of such beneficiaries are defined under the terms
1012 of the trust.

1013 **SECTION 27.** The following shall be codified as Section
1014 91-8-405, Mississippi Code of 1972:

1015 91-8-405. **Charitable purposes; enforcement.** (a) A
1016 charitable trust may be created for the relief of poverty, the
1017 advancement of education or religion, the promotion of health,
1018 governmental or municipal purposes, or other purposes the
1019 achievement of which is beneficial to the community.

1020 (b) If the terms of a charitable trust do not indicate a
1021 particular charitable purpose or beneficiary, the court may select
1022 one or more charitable purposes or beneficiaries. The selection



1023 must be consistent with the settlor's intention to the extent it
1024 can be ascertained.

1025 (c) The settlor of a charitable trust, among others, may
1026 maintain a proceeding to enforce the trust.

1027 **SECTION 28.** The following shall be codified as Section
1028 91-8-406, Mississippi Code of 1972:

1029 91-8-406. **Creation of trust induced by fraud, duress, or**
1030 **undue influence.** A trust is void to the extent its creation was
1031 induced by fraud, duress, or undue influence.

1032 **SECTION 29.** The following shall be codified as Section
1033 91-8-407, Mississippi Code of 1972:

1034 91-8-407. **Evidence of oral trust; trust in land.** (a)
1035 Except as provided in subsection (b) and except as required by a
1036 statute other than this chapter, a trust need not be evidenced by
1037 a trust instrument, but the creation of an oral trust and its
1038 terms may be established only by clear and convincing evidence.

1039 (b) (1) No trust of or in any real property can be created
1040 except by a written instrument signed by the party who declares or
1041 creates such trust (the "settlor"), or by his last will, in
1042 writing. Every writing declaring or creating a trust in real
1043 property, other than a last will, may be acknowledged and proved
1044 as other writing and filed for record with the clerk of the
1045 chancery court in which the real property, or part of it, is
1046 located, and the filing shall serve as constructive notice of the
1047 existence and terms of the trust from and after filing.



1048 (2) In lieu of filing the trust instrument, there may
1049 be filed a memorandum of trust signed by the settlor, trustee, or
1050 successor trustee and acknowledged or proved as other writings,
1051 which memorandum shall contain the following information:

1052 (A) The name of the trust;

1053 (B) The street and mailing address of the office,
1054 and the name and street and mailing address and telephone number
1055 of the trustee;

1056 (C) The name and street and mailing address and
1057 telephone number of the settlor of the trust;

1058 (D) A legally sufficient description of all
1059 interests in real property owned by or conveyed to the trust;

1060 (E) The anticipated date of termination of the
1061 trust or the event upon which the trust will be terminated; and

1062 (F) The general powers granted to the trustee.

1063 The memorandum may also contain the name and street and
1064 mailing address and telephone number of any successor trustee, and
1065 if so, no amendment to the memorandum will be required to be filed
1066 if and when the successor trustee so named assumes office. The
1067 memorandum of trust may be filed with the clerk of the appropriate
1068 chancery court either before or after a deed of conveyance of real
1069 property to the trust or trustee, in his capacity as such. The
1070 memorandum need not comply with subparagraph (D) if filed before
1071 or contemporaneously with a conveyance of any real property to the
1072 trust or trustee in his capacity as such, and need not be amended



1073 upon a subsequent conveyance of real property to the trust or
1074 trustee in his capacity as such, so long as the deed of conveyance
1075 is recorded in the appropriate county, and the recording of the
1076 deed of conveyance to the trust or trustee, as the case may be,
1077 shall constitute compliance with subparagraph (D). In addition,
1078 the deed of conveyance may also serve as a memorandum of trust, or
1079 an amendment to the memorandum of trust, as the case may be, so
1080 long as the deed of conveyance contains the information required
1081 for a memorandum of trust as set forth in this subsection (b).

1082 (3) The settlor may amend the memorandum if the trust
1083 to which it relates is subject to a power of amendment or
1084 revocation by the settlor; otherwise, only the then-serving
1085 trustee may amend the memorandum. The memorandum of amendment
1086 shall set forth the amendment to the original memorandum with
1087 particularity. The amended memorandum of trust may be made
1088 effective on a future date, which must be a date certain. The
1089 memorandum of amendment may be signed by the creator, trustee or
1090 successor trustee, as the case may be, and acknowledged or proved
1091 as other writings and filed for record with the clerk of the
1092 chancery court where the original memorandum is of record.

1093 (4) The provision of Sections 89-5-24 and 89-5-33 shall
1094 apply to any trust instrument, memorandum, or amendment that is to
1095 be recorded under this subsection (b).

1096 (5) The provisions of this subsection (b) shall have no
1097 application to trusts of personal property, nor to any trust



1098 arising or resulting by implication of law out of a conveyance of
1099 land. The failure to file a copy of the trust instrument,
1100 memorandum or deed of conveyance shall not affect the validity of
1101 the trust or the trust instrument.

1102 **SECTION 30.** The following shall be codified as Section
1103 91-8-408, Mississippi Code of 1972:

1104 91-8-408. **Trust for care of animal.** (a) A trust may be
1105 created to provide for the care of an animal alive during the
1106 settlor's lifetime. The trust terminates upon the death of the
1107 animal or, if the trust was created to provide for the care of
1108 more than one (1) animal alive during the settlor's lifetime, upon
1109 the death of the last surviving animal.

1110 (b) A trust authorized by this section may be enforced by a
1111 person appointed in the terms of the trust or, if no person is so
1112 appointed, by a person appointed by the court. In addition, a
1113 person having a demonstrated interest in the welfare of the animal
1114 may request the court to appoint a person to enforce the trust or
1115 to remove a person appointed.

1116 (c) Property of a trust authorized by this section may be
1117 applied only to its intended use, except to the extent the court
1118 determines that the value of the trust property exceeds the amount
1119 required for the intended use. Except as otherwise provided in
1120 the terms of the trust, property not required for the intended use
1121 must be distributed to the settlor, if then living, otherwise to
1122 the settlor's successors in interest.



1123 **SECTION 31.** The following shall be codified as Section
1124 91-8-409, Mississippi Code of 1972:

1125 91-8-409. **Noncharitable trust without ascertainable**
1126 **beneficiary.** Except as otherwise provided in Section 91-8-408,
1127 Section 41-43-51 or by another statute, the following rules apply:

1128 (1) A trust may be created for a noncharitable purpose
1129 without a definite or definitely ascertainable beneficiary or for
1130 a noncharitable but otherwise valid purpose to be selected by the
1131 trustee. The trust may not be enforced for more than twenty-one
1132 (21) years;

1133 (2) A trust authorized by this section may be enforced
1134 by a person appointed under the terms of the trust, if no person
1135 is so appointed, by a person appointed by the court.

1136 (3) Property of a trust authorized by this section may
1137 be applied only to its intended use, except to the extent the
1138 court determines that the value of the trust property exceeds the
1139 amount required for the intended use. Except as otherwise
1140 provided in the terms of the trust, property not required for the
1141 intended use must be distributed to the settlor, if then living,
1142 otherwise to the settlor's successors in interest.

1143 **SECTION 32.** The following shall be codified as Section
1144 91-8-410, Mississippi Code of 1972:

1145 91-8-410. **Modification or termination of trust; proceedings**
1146 **for approval or disapproval.** (a) In addition to the methods of
1147 termination prescribed by Sections 91-8-411 through 91-8-414, a



1148 trust terminates to the extent the trust is revoked or expires
1149 pursuant to its terms, no purpose of the trust remains to be
1150 achieved, or the purposes of the trust have become unlawful or
1151 impossible to achieve.

1152 (b) A proceeding to approve or disapprove a proposed
1153 modification or termination under Sections 91-8-411 through
1154 91-8-416, or trust combination or division under Section 91-8-417,
1155 may be commenced by a trustee or beneficiary. The settlor of a
1156 charitable trust may maintain a proceeding to modify the trust
1157 under Section 91-8-413.

1158 (c) Nothing in this section or this chapter is intended to
1159 create or imply a duty for a trustee to make or seek approval of a
1160 modification, termination, combination or division, and a trustee
1161 is not liable for not making or seeking approval of a
1162 modification, termination, combination or division.

1163 **SECTION 33.** The following shall be codified as Section
1164 91-8-411, Mississippi Code of 1972:

1165 91-8-411. **Modification or termination of noncharitable**
1166 **irrevocable trust by consent.** (a) During the settlor's lifetime,
1167 a noncharitable irrevocable trust may be modified or terminated by
1168 the trustee upon consent of all qualified beneficiaries, even if
1169 the modification or termination is inconsistent with a material
1170 purpose of the trust if the settlor does not object to the
1171 proposed modification or termination. The trustee shall notify
1172 the settlor of the proposed modification or termination not less



1173 than sixty (60) days before initiating the modification or
1174 termination. The notice of modification or termination must
1175 include:

1176 (1) An explanation of the reasons for the proposed
1177 modification or termination;

1178 (2) The date on which the proposed modification or
1179 termination is anticipated to occur; and

1180 (3) The date, not less than sixty (60) days after the
1181 giving of notice, by which the settlor must notify the trustee of
1182 an objection to the proposed modification or termination.

1183 (b) Following the settlor's death, a noncharitable
1184 irrevocable trust may be terminated upon consent of all of the
1185 beneficiaries if the court concludes that continuance of the trust
1186 is not necessary to achieve any material purpose of the trust. A
1187 noncharitable irrevocable trust may be modified upon consent of
1188 all of the beneficiaries if the court concludes that modification
1189 is not inconsistent with a material purpose of the trust.

1190 (c) Upon termination of a trust under subsection (a) or (b),
1191 the trustee shall distribute the trust property as agreed by the
1192 qualified beneficiaries.

1193 (d) If not all of the qualified beneficiaries consent to a
1194 proposed modification or termination of the trust under subsection
1195 (a) or (b), the modification or termination may be approved by the
1196 court if the court is satisfied that:



1197 (1) If all of the beneficiaries had consented, the
1198 trust could have been modified or terminated under this section;
1199 and

1200 (2) The interests of a qualified beneficiary who does
1201 not consent will be adequately protected.

1202 (e) Solely for purposes of this section, the term
1203 "noncharitable irrevocable trust" refers to a trust that is not
1204 revocable by the settlor with respect to which:

1205 (1) No federal or state income, gift, estate or
1206 inheritance tax charitable deduction was allowed upon transfers to
1207 the trust; and

1208 (2) The value of all interests in the trust owned by
1209 charitable organizations does not exceed five percent (5%) of the
1210 value of the trust.

1211 (f) Notwithstanding subsection (a), the trustee may seek
1212 court approval of a modification or termination.

1213 **SECTION 34.** The following shall be codified as Section
1214 91-8-412, Mississippi Code of 1972:

1215 91-8-412. **Modification or termination because of**
1216 **unanticipated circumstances or inability to administer trust**
1217 **effectively.** (a) The court may modify the administrative or
1218 dispositive terms of a trust or terminate the trust if, because of
1219 circumstances not anticipated by the settlor, modification or
1220 termination will further the purposes of the trust. To the extent



1221 practicable, the modification must be made in accordance with the
1222 settlor's probable intention.

1223 (b) The court may modify the administrative terms of a trust
1224 if continuation of the trust on its existing terms would be
1225 impracticable or wasteful or impair the trust's administration.

1226 (c) Upon termination of a trust under this section, the
1227 trustee shall distribute the trust property in a manner consistent
1228 with the purposes of the trust.

1229 **SECTION 35.** The following shall be codified as Section
1230 91-8-413, Mississippi Code of 1972:

1231 91-8-413. **Cy pres.** (a) Except as otherwise provided in
1232 subsection (b), if a particular charitable purpose becomes
1233 unlawful, impracticable, impossible to achieve, obsolete or
1234 ineffective:

1235 (1) The trust does not fail, in whole or in part;

1236 (2) The trust property does not revert to the settlor
1237 or the settlor's successors in interest; and

1238 (3) The court may apply cy pres to modify or terminate
1239 the trust by directing that the trust property be applied or
1240 distributed, in whole or in part, in a manner that fulfills as
1241 nearly as possible the settlor's charitable intent and purposes.

1242 (b) A provision in the terms of a charitable trust that
1243 would result in distribution of the trust property to a
1244 noncharitable beneficiary prevails over the power of the court



1245 under subsection (a) to apply cy pres to modify or terminate the
1246 trust only if, when the provision takes effect:

1247 (1) The trust property is to revert to the settlor and
1248 the settlor is still living; or

1249 (2) Fewer than twenty-one (21) years have elapsed since
1250 the date of the trust's creation.

1251 **SECTION 36.** The following shall be codified as Section
1252 91-8-414, Mississippi Code of 1972:

1253 91-8-414. **Modification or termination of uneconomic trust.**

1254 (a) After notice to the qualified beneficiaries, the trustee of a
1255 trust consisting of trust property having a total value less than
1256 One Hundred Fifty Thousand Dollars (\$150,000.00) may terminate the
1257 trust if the trustee concludes that the value of the trust
1258 property is insufficient to justify the cost of administration.

1259 (b) The court may modify or terminate a trust or remove the
1260 trustee and appoint a different trustee if it determines that the
1261 value of the trust property is insufficient to justify the cost of
1262 administration.

1263 (c) Upon termination of a trust under this section, the
1264 trustee shall distribute the trust property to or for the benefit
1265 of the beneficiaries, in such shares as the trustee, or the court
1266 in a court proceeding, determines, after taking into account the
1267 interests of income and remainder beneficiaries so as to conform
1268 as nearly as possible to the intention of the settlor, but a trust
1269 that qualified for the marital deduction for tax purposes shall



1270 only be distributed to the spouse of the settlor for whom the
1271 trust was created.

1272 (d) This section does not apply to an easement for
1273 conservation or preservation.

1274 (e) This section shall not limit the right of a trustee,
1275 acting alone, to terminate a trust in accordance with applicable
1276 provisions of the governing instrument.

1277 **SECTION 37.** The following shall be codified as Section
1278 91-8-415, Mississippi Code of 1972:

1279 91-8-415. **Reformation to correct mistakes.** The court may
1280 reform the terms of a trust, even if unambiguous, to conform the
1281 terms to the settlor's intention if it is proved by clear and
1282 convincing evidence what the settlor's intention was and that the
1283 terms of the trust were affected by a mistake of fact or law,
1284 whether in expression or inducement.

1285 **SECTION 38.** The following shall be codified as Section
1286 91-8-416, Mississippi Code of 1972:

1287 91-8-416. **Modification to achieve settlor's tax objectives.**
1288 To achieve the settlor's tax objectives, the court may modify the
1289 terms of a trust in a manner that is not contrary to the settlor's
1290 probable intention. The court may provide that the modification
1291 has retroactive effect.

1292 **SECTION 39.** The following shall be codified as Section
1293 91-8-417, Mississippi Code of 1972:



1294 91-8-417. **Combination and division of trusts.** (a) After
1295 notice to the qualified beneficiaries, a trustee may combine two
1296 (2) or more trusts into a single trust or divide a trust into two
1297 (2) or more separate trusts, if the result does not impair the
1298 rights of any beneficiary or adversely affect achievement of the
1299 purposes of the trust. In addition to any other combination or
1300 division the result of which does not impair the rights of any
1301 beneficiary or adversely affect achievement of the purposes of the
1302 trust, a combination or division pursuant to subsection (d) of
1303 this section shall not be considered as impairing the rights of
1304 any beneficiary or adversely affecting the achievement of the
1305 purposes of the trust. If the trusts to be combined or divided
1306 have different trustees, the trustees may negotiate the terms of
1307 the combined or divided trusts, including which trusts will be the
1308 surviving trust or trusts, who will be the trustee or trustees of
1309 the surviving trust or trusts and any other matter relating to the
1310 operation of the surviving trust or trusts.

1311 (b) In addition to combining two (2) or more trusts into a
1312 single trust or dividing a trust into two (2) or more separate
1313 trusts, a trustee, after notice to the qualified beneficiaries,
1314 may segregate by allocation to a separate account or trust a
1315 specific amount from, a portion of, or a specific asset included
1316 in the trust property of any trust to reflect a disclaimer, to
1317 reflect or result in differences in federal tax attributes, to
1318 satisfy any federal tax requirement, to make federal tax



1319 elections, to reduce potential generation-skipping transfer tax
1320 liability, or for any other tax planning purposes or other
1321 reasons.

1322 (c) A separate trust created by severance or segregation
1323 must be treated as a separate trust for all purposes from the
1324 effective date in which the severance or segregation is effective.
1325 The effective date of the severance or segregation may be
1326 retroactive. In managing, investing, administering, and
1327 distributing the trust property of any separate account or trust
1328 and in making applicable tax elections, the trustee may consider
1329 the differences in federal tax attributes and all other factors
1330 the trustee believes pertinent and may make disproportionate
1331 distributions from the separate trusts or accounts created.

1332 (d) A trust or account created by consolidation, severance,
1333 or segregation under this section shall not be considered as
1334 impairing the rights of a beneficiary if the trust is held on
1335 terms and conditions that are substantially equivalent to the
1336 terms of the trust before consolidation, severance, or segregation
1337 so that the aggregate interests of each beneficiary are
1338 substantially equivalent to the beneficiary's interests in the
1339 trust or trusts before consolidation, severance, or segregation.
1340 In determining whether a beneficiary's aggregate interests are
1341 substantially equivalent, the trustee shall consider the economic
1342 value of those interests to the extent they can be valued,
1343 considering actuarial factors as appropriate. If a beneficiary's



1344 interest cannot be valued with any reasonable degree of certainty
1345 because of the nature of the trust property, the terms of the
1346 trust, or other reasons, the trustee shall base the determination
1347 upon such other factors as are reasonable and appropriate under
1348 the facts and circumstances applicable to that particular trust,
1349 including the purposes of the trust. However, the terms of any
1350 trust before consolidation, severance or segregation which permit
1351 qualification of that trust for an applicable federal tax
1352 deduction, exclusion, election, exemption, or other special
1353 federal tax status must remain identical in the consolidated trust
1354 or in each of the separate trusts or accounts created by severance
1355 or segregation.

1356 (e) A trustee who acts in good faith is not liable to any
1357 person for taking into consideration differences in federal tax
1358 attributes and other pertinent factors in administering trust
1359 property of any separate account or trust, in making tax
1360 elections, and making distributions pursuant to the terms of the
1361 separate trust.

1362 (f) Income earned on a consolidated or severed or segregated
1363 amount, portion, or specific asset after the consolidation or
1364 severance is effective passes with that amount, portion or
1365 specific asset.

1366 (g) This section applies to all trusts whenever created,
1367 whether before, on, or after July 1, 2014, and whether the trusts
1368 are inter vivos or testamentary, are created by the same or



1369 different instruments, by the same or different persons and
1370 without regard to where created or administered.

1371 (h) This section does not limit the right of a trustee
1372 acting in accordance with the applicable provisions of the
1373 governing instrument to divide or consolidate trusts.

1374 (i) Nothing contained in this section shall be construed as
1375 granting to any trustee a general power of appointment over any
1376 trust not otherwise expressly granted in the trust instrument.

1377 **ARTICLE 5**

1378 **CREDITOR'S CLAIMS; SPENDTHRIFT AND DISCRETIONARY TRUSTS**

1379 [Reserved]

1380 **ARTICLE 6**

1381 **REVOCABLE TRUSTS**

1382 **SECTION 40.** The following shall be codified as Section
1383 91-8-601, Mississippi Code of 1972:

1384 91-8-601. **Capacity of settlor of revocable trust.** The
1385 capacity required to create, amend, revoke, or add property to a
1386 revocable trust, or to direct the actions of the trustee of a
1387 revocable trust, is the same as that required to make a will. To
1388 be effective as a post-death disposition of property transferred
1389 during the transferor's life or by the transferor's will to a
1390 trust of which the transferor is the settlor or deemed to be the
1391 settlor, neither a revocable nor an irrevocable trust existing on
1392 or executed after July 1, 2014, has to be executed with the
1393 formalities of a will.



1394 **SECTION 41.** The following shall be codified as Section
1395 91-8-602, Mississippi Code of 1972:

1396 91-8-602. **Revocation or amendment of revocable trust.** (a)

1397 Unless the terms of a trust expressly provide that the trust is
1398 irrevocable, the settlor may revoke or amend the trust. This
1399 subsection (a) does not apply to a trust created under an
1400 instrument executed before the effective date of this chapter.

1401 (b) If a revocable trust is created or funded by more than
1402 one (1) settlor:

1403 (1) To the extent the trust consists of community
1404 property, the trust may be revoked by either spouse acting alone
1405 but may be amended only by joint action of both spouses;

1406 (2) To the extent the trust consists of property other
1407 than community property, each settlor may revoke or amend the
1408 trust with regard to the portion of the trust property
1409 attributable to that settlor's contribution;

1410 (3) At the death of one (1) settlor, each surviving
1411 settlor shall have the right to revoke the trust as to the
1412 surviving settlor's portion of the trust as determined by the type
1413 of property in accordance with subsection (b) (1) or (2); and

1414 (4) Upon the revocation or amendment of the trust by
1415 fewer than all of the settlors or upon the death of one (1) of the
1416 settlors, the trustee shall promptly notify the other settlors of
1417 the revocation, amendment or death.

1418 (c) The settlor may revoke or amend a revocable trust:



1419 (1) By substantial compliance with a method provided in
1420 the terms of the trust; or

1421 (2) If the terms of the trust do not provide a method
1422 or the method provided in the terms is not expressly made
1423 exclusive, by:

1424 (A) A later will or codicil that expressly refers
1425 to the trust or specifically devises property that would otherwise
1426 have passed according to the terms of the trust; or

1427 (B) Any other method manifesting clear and
1428 convincing evidence of the settlor's intent; however, a written
1429 revocable trust may only be amended and revoked by a later written
1430 instrument delivered to the trustee.

1431 (d) Upon revocation of a revocable trust, the trustee shall
1432 deliver the trust property as the settlor directs. However, with
1433 respect to community property under subsection (b)(1), the trustee
1434 shall deliver the property one-half (1/2) to each spouse unless
1435 the trust instrument specifically states otherwise.

1436 (e) A settlor's powers with respect to revocation,
1437 amendment, or distribution of trust property may be exercised by
1438 an agent under a power of attorney only to the extent expressly
1439 authorized by the terms of the trust or the power.

1440 (f) A conservator or guardian of the settlor may exercise a
1441 settlor's powers with respect to revocation, amendment, or
1442 distribution of trust property only with the approval of the court
1443 supervising the conservatorship or guardianship.



1444 (g) A trustee who does not know that a trust has been
1445 revoked or amended is not liable to the settlor or settlor's
1446 successors in interest for distributions made and other actions
1447 taken on the assumption that the trust had not been amended or
1448 revoked.

1449 **SECTION 42.** The following shall be codified as Section
1450 91-8-603, Mississippi Code of 1972:

1451 91-8-603. **Settlor's powers; powers of withdrawal.** (a)
1452 While a trust is revocable rights of the beneficiaries are subject
1453 to the control of, and the duties of the trustee are owed
1454 exclusively to, the settlor.

1455 (b) If a revocable trust has more than one (1) settlor, the
1456 duties of the trustee are owed to all of the settlors having
1457 capacity to revoke the trust.

1458 (c) During the period the power may be exercised, the holder
1459 of a power of withdrawal has the rights of a settlor of a
1460 revocable trust under this section to the extent of the property
1461 subject to the power.

1462 **SECTION 43.** The following shall be codified as Section
1463 91-8-604, Mississippi Code of 1972:

1464 91-8-604. **Limitation on action contesting validity of**
1465 **revocable trust; distribution of trust property.** (a) A person
1466 may commence a judicial proceeding to contest the validity of all
1467 or part of the terms of a trust that was revocable at the
1468 settlor's death within the earlier of:



1469 (1) Two (2) years after the settlor's death; or
1470 (2) One hundred and twenty (120) days after the trustee
1471 sent the person a copy of the trust instrument and a notice
1472 informing the person of the trust's existence, of the trustee's
1473 name and address, and of the time allowed for commencing a
1474 proceeding.

1475 (b) Upon the death of the settlor of a trust that was
1476 revocable at the settlor's death, the trustee may proceed to
1477 distribute the trust property in accordance with the terms of the
1478 trust. The trustee is subject to liability for doing so only if:

1479 (1) The trustee knows of a pending judicial proceeding
1480 contesting the validity of all or part of the terms of the trust;
1481 or

1482 (2) A potential contestant has notified the trustee of
1483 a possible judicial proceeding to contest the trust and a judicial
1484 proceeding is commenced within sixty (60) days after the
1485 contestant sent the notification.

1486 (c) A beneficiary of a trust that is determined by a court
1487 proceeding to be invalid, in whole or in part, is liable to return
1488 to the court any distribution received for proper distribution to
1489 the extent that the invalidity applies to the distribution. If
1490 the beneficiary refuses to return the distribution after being
1491 ordered by the court, the beneficiary shall be liable for all
1492 costs incurred for recovery of the distribution.

1493 **ARTICLE 7**



1494 **OFFICE OF TRUSTEE**

1495 **SECTION 44.** The following shall be codified as Section
1496 91-8-701, Mississippi Code of 1972:

1497 91-8-701. **Accepting or declining trusteeship.** (a) Except
1498 as otherwise provided in subsection (c), a person designated as
1499 trustee accepts the trusteeship:

1500 (1) By substantially complying with a method of
1501 acceptance provided in the terms of the trust; or

1502 (2) If the terms of the trust do not provide a method
1503 or the method provided in the terms is not expressly made
1504 exclusive, by accepting delivery of the trust property, exercising
1505 powers or performing duties as trustee, or otherwise indicating
1506 acceptance of the trusteeship.

1507 (b) A person designated as trustee who has not yet accepted
1508 the trusteeship may reject the trusteeship. A designated trustee
1509 who does not accept the trusteeship within a reasonable time after
1510 knowing of the designation is deemed to have rejected the
1511 trusteeship.

1512 (c) A person designated as trustee, without accepting the
1513 trusteeship, may:

1514 (1) Act to preserve the trust property if, within a
1515 reasonable time after acting, the person sends a rejection of the
1516 trusteeship to the settlor or, if the settlor is dead or lacks
1517 capacity, to a qualified beneficiary; and



1518 (2) Inspect or investigate trust property to determine
1519 potential liability under environmental or other law or for any
1520 other purpose.

1521 **SECTION 45.** The following shall be codified as Section
1522 91-8-702, Mississippi Code of 1972:

1523 91-8-702. **Trustee's bond.** (a) A trustee shall give bond to
1524 secure performance of the trustee's duties only if the court finds
1525 that a bond is needed to protect the interests of the
1526 beneficiaries or is required by the terms of the trust and the
1527 court has not dispensed with the requirement.

1528 (b) The court may specify the amount of a bond, its
1529 liabilities, and whether sureties are necessary. The court may
1530 modify or terminate a bond at any time.

1531 (c) A state or national bank, savings institution, or trust
1532 company authorized to exercise fiduciary powers and regulated by
1533 the Office of the Comptroller of the Currency, Office of Thrift
1534 Supervision, the Mississippi Department of Banking and Consumer
1535 Finance, or equivalent state banking supervisors need not give
1536 bond, even if required by the terms of the trust.

1537 **SECTION 46.** The following shall be codified as Section
1538 91-8-703, Mississippi Code of 1972:

1539 91-8-703. **Cotrustees.** (a) Cotrustees who are unable to
1540 reach a unanimous decision after consultation among all the
1541 cotrustees may act by majority decision.



1542 (b) If a vacancy occurs in a cotrusteeship, the remaining
1543 cotrustees may act for the trust.

1544 (c) A cotrustee must participate in the performance of a
1545 trustee's function and consult with the other cotrustees unless
1546 the cotrustee is unavailable to perform the function because of
1547 absence, illness, disqualification under other law, or other
1548 temporary incapacity or the cotrustee has properly delegated the
1549 performance of the function to another trustee.

1550 (d) If a cotrustee is unavailable to perform duties because
1551 of absence, illness, disqualification under other law, or other
1552 temporary incapacity, and prompt action is necessary to achieve
1553 the purposes of the trust or to avoid injury to the trust
1554 property, the remaining cotrustee or a majority of the remaining
1555 cotrustees may act for the trust.

1556 (e) A trustee may delegate to a cotrustee the performance of
1557 a function other than a function that the terms of the trust
1558 instrument expressly require the trustees to perform jointly.
1559 Unless a delegation was irrevocable, a trustee may revoke a
1560 delegation previously made.

1561 (f) Except as otherwise provided in subsection (g), a
1562 trustee who does not join in an action of another trustee is not
1563 liable for the action.

1564 (g) Each trustee shall exercise reasonable care to:

1565 (1) Prevent a cotrustee from committing a serious
1566 breach of trust; and



1567 (2) Compel a cotrustee to redress a serious breach of
1568 trust.

1569 (h) A dissenting trustee who joins in an action at the
1570 direction of the majority of the trustees and who notified any
1571 cotrustee of the dissent at or before the time of the action is
1572 not liable for the action unless the action is a serious breach of
1573 trust.

1574 (i) A trustee shall keep each cotrustee and any other
1575 fiduciary reasonably informed about the administration of the
1576 trust, to the extent the trustee has knowledge that each such
1577 cotrustee or other fiduciary does not have knowledge of the
1578 trustee's actions, or regarding other material information or the
1579 availability of such information, related to the administration of
1580 the trust that would be reasonably necessary for each cotrustee or
1581 other fiduciary to perform his or her duties as a trustee or other
1582 fiduciary of the trust.

1583 **SECTION 47.** The following shall be codified as Section
1584 91-8-704, Mississippi Code of 1972:

1585 91-8-704. **Vacancy in trusteeship; appointment of successor.**

1586 (a) A vacancy in a trusteeship occurs if:

1587 (1) A person designated as trustee rejects the
1588 trusteeship;

1589 (2) A person designated as trustee cannot be identified
1590 or does not exist;

1591 (3) A trustee resigns;



1592 (4) A trustee is disqualified or removed;
1593 (5) A trustee dies; or
1594 (6) A conservator or guardian is appointed for an
1595 individual serving as trustee.

1596 (b) If one or more cotrustees remain in office, a vacancy in
1597 a trusteeship need not be filled. A vacancy in a trusteeship must
1598 be filled if the trust has no remaining trustee.

1599 (c) A vacancy in a trusteeship of a noncharitable trust that
1600 is required to be filled must be filled in the following order of
1601 priority:

1602 (1) By a person designated in the terms of the trust to
1603 act as successor trustee;

1604 (2) By a person appointed by unanimous agreement of the
1605 qualified beneficiaries; or

1606 (3) By a person appointed by the court.

1607 (d) A vacancy in a trusteeship of a charitable trust that is
1608 required to be filled must be filled in the following order of
1609 priority:

1610 (1) By a person designated in the terms of the trust to
1611 act as successor trustee;

1612 (2) By a person selected by the unanimous agreement of
1613 the charitable organizations expressly designated to receive
1614 distributions under the terms of the trust if the Attorney General
1615 does not affirmatively object within thirty (30) days of receipt
1616 of notice of the person selected; or



1617 (3) By a person appointed by the court.

1618 (e) Whether or not a vacancy in a trusteeship exists or is
1619 required to be filled, the court may appoint an additional trustee
1620 or special fiduciary whenever the court considers the appointment
1621 necessary for the administration of the trust.

1622 **SECTION 48.** The following shall be codified as Section
1623 91-8-705, Mississippi Code of 1972:

1624 91-8-705. **Resignation of trustee.** (a) A trustee may
1625 resign:

1626 (1) Upon at least thirty (30) days' notice to the
1627 qualified beneficiaries, the settlor, if living, and all
1628 cotrustees; or

1629 (2) With the approval of the court.

1630 (b) In approving a resignation, the court may issue orders
1631 and impose conditions reasonably necessary for the protection of
1632 the trust property.

1633 (c) Any liability of a resigning trustee or of any sureties
1634 on the trustee's bond for acts or omissions of the trustee is not
1635 discharged or affected by the trustee's resignation.

1636 **SECTION 49.** The following shall be codified as Section
1637 91-8-706, Mississippi Code of 1972:

1638 91-8-706. **Removal of trustee.** (a) The settlor, a
1639 cotrustee, or a beneficiary may request the court to remove a
1640 trustee, or a trustee may be removed by the court on its own
1641 initiative.



1642 (b) The court may remove a trustee if:
1643 (1) The trustee has committed a serious breach of
1644 trust;
1645 (2) Lack of cooperation among cotrustees substantially
1646 impairs the administration of the trust;
1647 (3) Because of unfitness, unwillingness, or persistent
1648 failure of the trustee to administer the trust effectively, the
1649 court determines that removal of the trustee best serves the
1650 interests of the beneficiaries; or
1651 (4) There has been a substantial change of
1652 circumstances or removal is requested by all of the qualified
1653 beneficiaries, the court finds that removal of the trustee best
1654 serves the interests of all of the beneficiaries and is not
1655 inconsistent with a material purpose of the trust, and a suitable
1656 cotrustee or successor trustee is available.
1657 (c) Pending a final decision on a request to remove a
1658 trustee, or in lieu of or in addition to removing a trustee, the
1659 court may order such appropriate relief under Section 91-8-1001(b)
1660 as may be necessary to protect the trust property or the interests
1661 of the beneficiaries.

1662 **SECTION 50.** The following shall be codified as Section
1663 91-8-707, Mississippi Code of 1972:

1664 91-8-707. **Delivery of property by former trustee.** (a)
1665 Unless a cotrustee remains in office or the court otherwise
1666 orders, and until the trust property is delivered to a successor



1667 trustee or other person entitled to it, a trustee who has resigned
1668 or been removed has the duties of a trustee and the powers
1669 necessary to protect the trust property.

1670 (b) A trustee who has resigned or been removed shall, within
1671 a reasonable time, deliver the trust property within the trustee's
1672 possession to the cotrustee, successor trustee, or other person
1673 entitled to it.

1674 **SECTION 51.** The following shall be codified as Section
1675 91-8-708, Mississippi Code of 1972:

1676 91-8-708. **Compensation of trustee, trust advisor and trust**
1677 **protector.** (a) If the terms of a trust do not specify the
1678 trustee's, trust advisor's, or trust protector's compensation, and
1679 if the settlor, if living, or otherwise a majority of the
1680 qualified beneficiaries as defined in Section 91-8-103, have not
1681 otherwise agreed with the trustee, trust advisor, or trust
1682 protector, a trustee, trust advisor, or trust protector is
1683 entitled to compensation that is reasonable under the
1684 circumstances.

1685 (b) If the terms of a trust specify the trustee's, trust
1686 advisor's, or trust protector's compensation, the trustee, trust
1687 advisor, or trust protector is entitled to be compensated as
1688 specified in the trust, but the court may allow more or less
1689 compensation if:



1690 (1) The duties of the trustee, trust advisor, or trust
1691 protector are substantially different from those contemplated when
1692 the trust was created; or

1693 (2) The compensation specified by the terms of the
1694 trust would be unreasonably low or high.

1695 (c) Factors for the court to consider in deciding upon a
1696 trustee's, trust advisor's, or trust protector's compensation
1697 shall include the size of the trust, the nature and number of the
1698 assets, the income produced, the time and responsibility required,
1699 the expertise required, any management or sale of real property or
1700 closely held business interests, any involvement in litigation to
1701 protect trust property, and other relevant factors.

1702 (d) Subject to the court's authority as provided in
1703 subsection (b), regardless of its form of entity, the fees set
1704 forth in the published fee schedule of a trustee, trust advisor,
1705 or trust protector that is regulated by the Mississippi Department
1706 of Banking and Consumer Finance, the equivalent regulatory agency
1707 of another state, the Office of the Comptroller of the Currency,
1708 or the Office of Thrift Supervision shall be presumed to be
1709 reasonable, unless otherwise provided by the terms of the trust.

1710 **SECTION 52.** The following shall be codified as Section
1711 91-8-709, Mississippi Code of 1972:

1712 91-8-709. **Reimbursement of expenses.** (a) A trustee, trust
1713 advisor, or trust protector is entitled to be reimbursed out of
1714 the trust property, with interest as appropriate, for:



1715 (1) Expenses that were properly incurred in the
1716 administration of the trust, including the defense or prosecution
1717 of any action, whether successful or not, unless the trustee is
1718 determined to have willfully or wantonly committed a material
1719 breach of trust; and

1720 (2) To the extent necessary to prevent unjust
1721 enrichment of the trust, expenses that were not properly incurred
1722 in the administration of the trust.

1723 (b) An advance by the trustee, trust advisor, or trust
1724 protector or by a person named in Section 91-8-701(c)(1) of money
1725 for the protection of the trust gives rise to a lien against trust
1726 property to secure reimbursement with reasonable interest.

1727 **SECTION 53.** The following shall be codified as Section
1728 91-8-710, Mississippi Code of 1972:

1729 91-8-710. **Directed trusts.** If the terms of the trust
1730 require a trustee, trust advisor, or trust protector to follow the
1731 direction of a trust advisor or trust protector, and the trustee,
1732 trust advisor, or trust protector acts in accordance with the
1733 direction, then the trustee, trust advisor, or trust protector so
1734 directed shall be treated as an excluded fiduciary.

1735 **SECTION 54.** The following shall be codified as Section
1736 91-8-711, Mississippi Code of 1972:

1737 91-8-711. **Directed trusts; accepting or declining fiduciary**
1738 **appointment.** (a) A trust advisor, trust protector, or other
1739 fiduciary other than a cotrustee, the cotrustee already being



1740 provided for in Section 91-8-701(a), may accept its appointment as
1741 the respective fiduciary in a like manner as provided for a
1742 trustee under Section 91-8-701(a).

1743 (b) A trust advisor, trust protector, or other fiduciary
1744 other than a cotrustee, the cotrustee already being provided for
1745 in Section 91-8-701(b), may reject its appointment as the
1746 respective fiduciary in a like manner as provided for a trustee
1747 under Section 91-8-701(b).

1748 (c) A trust advisor, trust protector, or other fiduciary
1749 other than a cotrustee, the cotrustee already being provided for
1750 in Section 91-8-701(c), may, without accepting its appointment as
1751 the respective fiduciary, carry out the appropriate activities
1752 relative to the respective fiduciary as are provided for a trustee
1753 under Section 91-8-701(c).

1754 **SECTION 55.** The following shall be codified as Section
1755 91-8-712, Mississippi Code of 1972:

1756 91-8-712. **Directed trusts; fiduciary's bond.** (a) Section
1757 91-8-702 applies to trust advisors, trust protectors, or other
1758 fiduciaries other than cotrustees, the cotrustees already being
1759 provided for in Section 91-8-702.

1760 (b) When exercising its powers under this section, the court
1761 shall consider the powers, duties, and liabilities relative to the
1762 respective fiduciaries other than a cotrustee and whether any of
1763 the respective fiduciaries are excluded fiduciaries.



1764 **SECTION 56.** The following shall be codified as Section
1765 91-8-713, Mississippi Code of 1972:

1766 91-8-713. **Vacancy; directed trusts.** (a) Except as
1767 otherwise provided by the terms of the trust upon obtaining
1768 knowledge of a vacancy in the office of trust advisor or trust
1769 protector, the trustee shall be vested with any fiduciary power or
1770 duty that otherwise would be vested in the trustee but that by the
1771 terms of the trust was vested in the trust advisor or trust
1772 protector, until such time that the vacancy in the office of trust
1773 advisor or trust protector, as applicable, is filled.

1774 (b) The vacancy shall be filled in the same manner as would
1775 a vacancy in trusteeship that is required to be filled, either as
1776 provided by Section 91-8-704(c) if the trust is a noncharitable
1777 trust, or as provided by Section 91-8-704(d) if the trust is a
1778 charitable trust. Section 91-8-704(e) shall also apply relative
1779 to trust advisors and trust protectors in the same manner as that
1780 subsection does to trustees and vacancies in trusteeship.

1781 (c) Notwithstanding subsection (a), a trustee shall not be
1782 liable for failing to exercise or assume any power or duty held by
1783 a trust advisor or trust protector and conferred upon the trustee
1784 by subsection (a) for the one-hundred-twenty-day period
1785 immediately following the date the trustee obtains knowledge of
1786 the vacancy.

1787 **SECTION 57.** The following shall be codified as Section
1788 91-8-714, Mississippi Code of 1972:



1789 91-8-714. **Directed trusts; resignation of fiduciary.** (a) A
1790 trust advisor, trust protector, or other fiduciary other than a
1791 cotrustee, a cotrustee's resignation already being provided for in
1792 Section 91-8-705, may resign its appointment as the respective
1793 fiduciary in a like manner as provided for a trustee under Section
1794 91-8-705.

1795 (b) When exercising its powers under this section relative
1796 to resignation, the court shall consider the powers, duties, and
1797 liabilities relative to the respective fiduciaries other than a
1798 cotrustee and whether any of the respective fiduciaries are
1799 excluded fiduciaries.

1800 **SECTION 58.** The following shall be codified as Section
1801 91-8-715, Mississippi Code of 1972:

1802 91-8-715. **Directed trusts; removal of fiduciary.** (a) A
1803 trust advisor, trust protector, or other fiduciary other than a
1804 cotrustee, a cotrustee's removal already being provided for in
1805 Section 91-8-706, may be removed as the respective fiduciary in a
1806 like manner as provided for a trustee under Section 91-8-706.

1807 (b) When exercising its powers under this section relative
1808 to removal of the respective fiduciary, the court shall consider
1809 the powers, duties, and liabilities relative to the respective
1810 fiduciaries other than a cotrustee and whether any of the
1811 respective fiduciaries are excluded fiduciaries.

1812 **ARTICLE 8**

1813 **DUTIES AND POWERS OF TRUSTEE**



1814 **SECTION 59.** The following shall be codified as Section
1815 91-8-801, Mississippi Code of 1972:

1816 91-8-801. **Duty to administer trust.** Upon acceptance of a
1817 trusteeship, the trustee shall administer the trust until such
1818 time as the trust terminates or a successor trustee is appointed
1819 and all assets are delivered in good faith, in accordance with its
1820 terms and purposes and the interests of the beneficiaries, and in
1821 accordance with this chapter.

1822 **SECTION 60.** The following shall be codified as Section
1823 91-8-802, Mississippi Code of 1972:

1824 91-8-802. **Duty of loyalty.** (a) A trustee shall administer
1825 the trust solely in the interests of the beneficiaries.

1826 (b) Subject to the rights of persons dealing with or
1827 assisting the trustee as provided in Section 91-8-1012 or as may
1828 otherwise be allowed under Mississippi law, a sale, encumbrance,
1829 or other transaction involving the investment or management of
1830 trust property entered into by the trustee for the trustee's own
1831 personal account or which is otherwise affected by a conflict
1832 between the trustee's fiduciary and personal interests is voidable
1833 by a beneficiary affected by the transaction unless:

1834 (1) The transaction was authorized by the terms of the
1835 trust;

1836 (2) The transaction was approved by the court;

1837 (3) The beneficiary did not commence a judicial
1838 proceeding within the time allowed by Section 91-8-1005;



1839 (4) The beneficiary consented to the trustee's conduct,
1840 ratified the transaction, or released the trustee in compliance
1841 with Section 91-8-1009; or

1842 (5) The transaction involves a contract entered into or
1843 claim acquired by the trustee before the person became or
1844 contemplated becoming trustee.

1845 (c) A sale, encumbrance, or other transaction involving the
1846 investment or management of trust property is presumed to be
1847 affected by a conflict between personal and fiduciary interests if
1848 it is entered into by the trustee with:

1849 (1) The trustee's spouse;

1850 (2) The trustee's descendants, siblings, parents, or
1851 their spouses;

1852 (3) An agent or attorney of the trustee; or

1853 (4) A corporation or other person or enterprise in
1854 which the trustee, or a person that owns a significant interest in
1855 the trustee, has an interest that might affect the trustee's best
1856 judgment.

1857 (d) A transaction not concerning trust property in which the
1858 trustee engages in the trustee's individual capacity involves a
1859 conflict between personal and fiduciary interests if the
1860 transaction concerns an opportunity properly belonging to the
1861 trust.

1862 (e) In addition to all other permissible investments and
1863 delegatable duties listed in this title, so long as they are



1864 fairly priced and in accordance with the interest of the
1865 beneficiaries and the interests of the fiduciary's appointment and
1866 otherwise comply with the Mississippi Uniform Prudent Investor Act
1867 or Article 12 of this chapter, a fiduciary may purchase, sell,
1868 hold or otherwise deal with an affiliate or an interest in an
1869 affiliated investment, as well as delegate to an affiliate or
1870 other agent associated with the fiduciary and, upon satisfaction
1871 of the conditions stated in subsection (g), the fiduciary may
1872 receive fiduciary compensation from the account at the same rate
1873 as the fiduciary would otherwise be entitled to be compensated.
1874 These activities shall occur without any presumption of a conflict
1875 between personal and fiduciary interests of the trustee or other
1876 fiduciary.

1877 (f) As used in this section:

1878 (1) "Affiliate" means any corporation or other entity
1879 that directly or indirectly through one or more intermediaries
1880 controls, is controlled by, or is under common control with the
1881 fiduciary.

1882 (2) "Affiliated investment" means an investment for
1883 which the fiduciary or an affiliate of the fiduciary acts as
1884 adviser, administrator, distributor, placement agent, underwriter,
1885 broker or in any other capacity for which it receives or has
1886 received a fee or commission from the investment or an investment
1887 acquired or disposed of in a transaction for which the fiduciary
1888 or an affiliate of the fiduciary receives or has received a fee or



1889 commission. "Affiliated investment" also means an investment in
1890 an insurance contract purchased from an insurance agency owned by,
1891 or affiliated with, the fiduciary, or any of its affiliates.

1892 (3) "Delegate to an affiliate or associated agent"
1893 means a proper delegation of any duty of the fiduciary to any
1894 person or entity that is affiliated with, or associated with, the
1895 fiduciary. The action of doing any of the above shall be known as
1896 a "delegation to an affiliate or associated agent."

1897 (4) "Fee or commission" means compensation paid to a
1898 fiduciary or an affiliate thereof on account of its services to or
1899 on behalf of an investment.

1900 (5) For purposes of this section, "fiduciary" means any
1901 fiduciary as defined in Section 91-8-103, as well as any other
1902 fiduciary.

1903 (6) "Investment" shall mean any security as defined in
1904 Section 2(a)(1) of the Securities Act of 1933, any contract of
1905 sale of a commodity for future delivery within the meaning of
1906 Section 2(i) of the Commodity Exchange Act, or any other asset
1907 permitted for fiduciary accounts pursuant to the terms of the
1908 Mississippi Uniform Prudent Investor Act or by the terms of the
1909 governing instrument, including by way of illustration and not
1910 limitation: shares or interests in a public or private investment
1911 fund, including, but not limited to, a public or private
1912 investment fund organized as a limited partnership, limited
1913 liability company, statutory or common-law business trust, real



1914 estate investment trust, joint venture or other general or limited
1915 partnership, or an open-end or closed-end management type
1916 investment company or investment trust registered under the
1917 Investment Company Act of 1940.

1918 (g) A fiduciary seeking compensation pursuant to subsection
1919 (e) shall, as is applicable relative to the fiduciary's particular
1920 appointment, disclose either: to those persons entitled to be
1921 kept informed about the administration of a trust under Section
1922 91-8-813(a), subject to the provisions of Sections 91-8-813(d) and
1923 91-8-105(d); to each principal in an agency relationship; or to
1924 all current recipients of statements of any other fiduciary
1925 account not described above; all fees or commissions paid or to be
1926 paid by the account, or received or to be received by an affiliate
1927 arising from such affiliated investment or delegation to an
1928 affiliate or associated agent. The disclosure required under this
1929 subsection (g) may be given either in a copy of the prospectus or
1930 any other disclosure document prepared for the affiliated
1931 investment under federal or state securities laws or in a written
1932 summary that includes all fees or commissions received or to be
1933 received by the fiduciary or any affiliate of the fiduciary and an
1934 explanation of the manner in which such fees or commissions are
1935 calculated, either as a percentage of the assets invested or by
1936 some other method. The disclosure shall be made at least annually
1937 unless there has been no increase in the rate at which fees or
1938 commissions are calculated since the most recent disclosure.



1939 Notwithstanding this subsection (g), no such disclosure is
1940 required if the governing instrument or a court order expressly
1941 authorizes the fiduciary to invest the fiduciary account in
1942 affiliated investments or to perform the delegation to an
1943 affiliate or associated agent.

1944 (h) A fiduciary that has complied with subsection (g),
1945 whether by making the applicable disclosure or by relying on the
1946 terms of a governing instrument or court order, shall have full
1947 authority to administer an affiliated investment, including the
1948 authority to vote proxies thereon, without regard to the
1949 affiliation between the fiduciary and the investment or the
1950 fiduciary and delegatee, as the case may be.

1951 (i) In voting shares of stock or in exercising powers of
1952 control over similar interests in other forms of enterprise, the
1953 trustee shall act in the best interests of the beneficiaries. If
1954 the trust is the sole owner of a corporation or other form of
1955 enterprise, the trustee shall elect or appoint directors or other
1956 managers who will manage the corporation or enterprise in the best
1957 interests of the beneficiaries.

1958 (j) The following transactions, if fairly priced and in
1959 accordance with the interest of the beneficiaries and the purposes
1960 of the trust, are not presumed to be affected by a conflict
1961 between the trustee's personal and fiduciary interest if any
1962 investment made pursuant to the transaction otherwise complies
1963 with the Mississippi Prudent Investor Act:



1964 (1) An agreement between a trustee and a beneficiary
1965 relating to the appointment or compensation of the trustee, or any
1966 of its affiliates;

1967 (2) Payment of reasonable compensation to the trustee,
1968 or any of its affiliates;

1969 (3) A transaction between a trust and another trust,
1970 decedent's estate, guardianship, or conservatorship of which the
1971 trustee is a fiduciary or in which a beneficiary has an interest;

1972 (4) A deposit of trust money in a regulated
1973 financial-service institution operated by the trustee or an
1974 affiliate;

1975 (5) An advance by the trustee of money for the
1976 protection of the trust;

1977 (6) An investment by a trustee in securities of an
1978 investment company or investment trust to which the trustee, or
1979 its affiliates, provides services in a capacity other than as a
1980 trustee provided that any investment made pursuant to the
1981 transaction otherwise complies with the Mississippi Prudent
1982 Investor Act;

1983 (7) The placing of securities transactions by a trustee
1984 through a securities broker that is part of the same company as
1985 the trustee, is owned by the trustee, or is affiliated with the
1986 trustee;

1987 (8) Any loan from the trustee or its affiliate;



1988 (9) An investment in an insurance contract purchased
1989 from an insurance agency owned by, or affiliated with the trustee,
1990 or any of its affiliates; or

1991 (10) A delegation and any transaction made pursuant to
1992 the delegation from a trustee to an agent that is affiliated or
1993 associated with the trustee.

1994 (k) The court may appoint a special fiduciary to make a
1995 decision with respect to any proposed transaction that might
1996 violate this section if entered into by the trustee.

1997 **SECTION 61.** The following shall be codified as Section
1998 91-8-803, Mississippi Code of 1972:

1999 91-8-803. **Impartiality.** If a trust has two (2) or more
2000 beneficiaries, the trustee shall act impartially in investing,
2001 managing, and distributing the trust property, giving due regard
2002 to the beneficiaries' respective interests and the purposes of the
2003 trust.

2004 **SECTION 62.** The following shall be codified as Section
2005 91-8-804, Mississippi Code of 1972:

2006 91-8-804. **Prudent administration.** A trustee shall
2007 administer the trust as a prudent person would, by considering the
2008 purposes, terms, distributional requirements, and other
2009 circumstances of the trust. In satisfying this standard, the
2010 trustee shall exercise reasonable care, skill, and caution.

2011 **SECTION 63.** The following shall be codified as Section
2012 91-8-805, Mississippi Code of 1972:



2013 91-8-805. **Costs of administration.** In administering a
2014 trust, the trustee may incur only costs that are reasonable in
2015 relation to the trust property, the purposes of the trust, and the
2016 skills of the trustee.

2017 **SECTION 64.** The following shall be codified as Section
2018 91-8-806, Mississippi Code of 1972:

2019 91-8-806. **Trustee's skills.** A trustee who has special
2020 skills or expertise, or is named trustee in reliance upon the
2021 trustee's representation that the trustee has special skills or
2022 expertise, shall use those special skills or expertise.

2023 **SECTION 65.** The following shall be codified as Section
2024 91-8-807, Mississippi Code of 1972:

2025 91-8-807. **Delegation by trustee.** (a) A trustee may
2026 delegate duties and powers that a prudent trustee could properly
2027 delegate under the circumstances. The trustee shall exercise
2028 reasonable care, skill, and caution in:

- 2029 (1) Selecting an agent;
- 2030 (2) Establishing the scope and terms of the delegation,
2031 consistent with the purposes and terms of the trust; and
- 2032 (3) Periodically reviewing the agent's actions in order
2033 to monitor the agent's performance and compliance with the terms
2034 of the delegation.

2035 (b) In performing a delegated function, an agent owes a duty
2036 to the trust to exercise reasonable care, skill, and caution to
2037 comply with the terms of the delegation.



2038 (c) A trustee who complies with subsection (a) is not liable
2039 to the beneficiaries or to the trust for an action or inaction of
2040 the agent to whom the function was delegated.

2041 (d) By accepting a delegation of powers or duties from the
2042 trustee of a trust that is subject to the law of this state, an
2043 agent submits to the jurisdiction of the courts of this state.

2044 **SECTION 66.** The following shall be codified as Section
2045 91-8-808, Mississippi Code of 1972:

2046 91-8-808. **Powers to direct.** (a) While a trust is
2047 revocable, the trustee may follow a direction of the settlor that
2048 is contrary to the terms of the trust or contrary to the normal
2049 practice of the trustee in regard to the action requested.

2050 (b) If the terms of a trust confer upon a person other than
2051 the settlor of a revocable trust power to direct certain actions
2052 of the trustee, the trustee shall act in accordance with an
2053 exercise of the power.

2054 (c) The terms of a trust may confer upon a trustee or other
2055 person a power to direct the modification or termination of the
2056 trust.

2057 (d) If a person holds a power to direct pursuant to Article
2058 12 of this chapter, that person is a trust advisor, trust
2059 protector, or both. The power holder is subject to all the
2060 provisions of Article 12, including any duties prescribed by
2061 Article 12 and any provisions that make the power holder a
2062 fiduciary. Any trustee or other person that under Article 12 is



2063 relieved of any duty or any liability, or is otherwise protected
2064 under Article 12, shall be so relieved and otherwise protected.

2065 **SECTION 67.** The following shall be codified as Section
2066 91-8-809, Mississippi Code of 1972:

2067 91-8-809. **Control and protection of trust property.** A
2068 trustee shall take reasonable steps to take control of and protect
2069 the trust property.

2070 **SECTION 68.** The following shall be codified as Section
2071 91-8-810, Mississippi Code of 1972:

2072 91-8-810. **Recordkeeping and identification of trust**
2073 **property.** (a) A trustee shall keep adequate records of the
2074 administration of the trust.

2075 (b) A trustee shall keep trust property separate from the
2076 trustee's own property.

2077 (c) Except as otherwise provided in subsection (d), a
2078 trustee shall cause the trust property to be designated so that
2079 the interest of the trust, to the extent feasible, appears in
2080 records maintained by a party other than a trustee or beneficiary.

2081 (d) If the trustee maintains records clearly indicating the
2082 respective interests, a trustee may invest as a whole the property
2083 of two (2) or more separate trusts.

2084 **SECTION 69.** The following shall be codified as Section
2085 91-8-811, Mississippi Code of 1972:



2086 91-8-811. **Enforcement and defense of claims.** (a) A trustee
2087 shall take reasonable steps to enforce claims of the trust and to
2088 defend claims against the trust.

2089 (b) A trustee may abandon or assign any claim that it
2090 believes is unreasonable to enforce to one or more of the
2091 beneficiaries of the trust holding the claim.

2092 **SECTION 70.** The following shall be codified as Section
2093 91-8-812, Mississippi Code of 1972:

2094 91-8-812. **Collecting trust property.** A trustee shall take
2095 reasonable steps to compel a former trustee or other person to
2096 deliver trust property to the trustee, and to redress a breach of
2097 trust known to the trustee to have been committed by a former
2098 trustee. No successor trustee appointed after the examination of
2099 the accounts of a trustee or the waiver of the examination by the
2100 beneficiaries shall be responsible for the acts and omissions of
2101 the prior trustee.

2102 **SECTION 71.** The following shall be codified as Section
2103 91-8-813, Mississippi Code of 1972:

2104 91-8-813. **Duty to inform and report.** (a) (1) A trustee
2105 shall keep the beneficiaries of the trust that are current
2106 mandatory or permissible distributees of trust income or
2107 principal, or both, reasonably informed about the administration
2108 of the trust and of the material facts necessary for them to
2109 protect their interests.



2110 (2) Unless unreasonable under the circumstances, a
2111 trustee shall respond in a reasonable amount of time to a
2112 qualified beneficiary's request for information related to the
2113 administration of the trust. Additionally, a qualified
2114 beneficiary shall reimburse the trustee for any reasonable
2115 expenses incurred in responding to requests for information.

2116 (3) The requirements of subsection (a) shall also apply
2117 to the benefit of anyone who, in a capacity other than that of a
2118 fiduciary, holds a power of appointment.

2119 (b) The trustee of an irrevocable or nongrantor trust within
2120 sixty (60) days after the acceptance and funding of a trust,
2121 excluding nominal funding for the trust to have corpus or the
2122 depositing of insurance policies on the life of a living person,
2123 shall notify each current income beneficiary, each vested ultimate
2124 beneficiary of a remainder interest and anyone who, in a capacity
2125 other than that of a fiduciary, holds a power of appointment, that
2126 the trust has been established.

2127 (1) The required notice shall:

2128 (A) Be sent by first-class mail or personal
2129 delivery; and

2130 (B) Consist of either a complete copy of the
2131 document establishing the trust together with the trustee's name,
2132 address and telephone number or an abstract of the trust, as the
2133 trustee, in the trustee's absolute discretion, may choose.

2134 (2) The abstract shall contain:



2135 (A) The name, address and telephone number of each
2136 trustee; and

2137 (B) If for a current income beneficiary:

2138 (i) The number of other current income
2139 beneficiaries;

2140 (ii) Whether distributions of income are
2141 required or discretionary; and

2142 (iii) Whether distributions of principal are
2143 permitted and, if so, for what purpose or purposes; and

2144 (C) If for a remainder beneficiary:

2145 (i) The number of other remainder
2146 beneficiaries; and

2147 (ii) The conditions that must be met before
2148 the beneficiary's share is distributable.

2149 (D) If for anyone who, in a capacity other than
2150 that of a fiduciary, holds a power of appointment, all of the
2151 information required by subsection (b) necessary or beneficial for
2152 that person to effectively determine whether or not to exercise
2153 that power of appointment.

2154 (c) Upon the termination of an interest of any one or more
2155 of the current income beneficiaries:

2156 (1) The trustee shall similarly notify the income
2157 beneficiaries who are takers of the terminated interest of their
2158 interest by sending or delivering them the notice required in
2159 subsection (b); and



2160 (2) If at that time the period described in subsection
2161 (b) has lapsed, the trustee shall similarly notify anyone who, in
2162 a capacity other than that of a fiduciary, holds a power of
2163 appointment by sending or delivering to the person the notice
2164 required in subsection (b).

2165 (d) A beneficiary may waive the right to a trustee's report
2166 or other information otherwise required to be furnished under this
2167 section. A beneficiary, with respect to future reports and other
2168 information, may withdraw a waiver previously given. Anyone who,
2169 in a capacity other than that of a fiduciary, holds a power of
2170 appointment has the same power as provided a beneficiary in this
2171 subsection to waive reports and other information and to withdraw
2172 a waiver previously given.

2173 (e) Subsections (a) and (b) shall not apply to the extent
2174 that those provisions are waived or modified in accordance with
2175 Section 91-8-105(d).

2176 (f) Subsection (a)(1) and subsection (b) do not apply to a
2177 trust created under a trust agreement that became irrevocable
2178 before July 1, 2014. Trust law in effect before July 1, 2014,
2179 regarding the subject matter of subsection (a)(1) and subsection
2180 (b) shall continue to apply to those trusts.

2181 (g) If the trustee of a trust is bound by any written
2182 confidentiality restrictions with respect to an asset of a trust,
2183 a trustee may require that any beneficiary who is eligible to
2184 receive information pursuant to this or any other section of this



2185 chapter about the asset shall agree in writing to be bound by the
2186 confidentiality restrictions that bind the trustee before
2187 receiving the information from the trustee.

2188 (h) A trust advisor, trust protector, or other fiduciary
2189 designated by the terms of the trust shall keep each excluded
2190 fiduciary designated by the terms of the trust reasonably informed
2191 about:

2192 (1) The administration of the trust with respect to any
2193 specific duty or function being performed by the trust advisor,
2194 trust protector, or other fiduciary to the extent that the duty or
2195 function would normally be performed by the excluded fiduciary or
2196 to the extent that providing the information to the excluded
2197 fiduciary is reasonably necessary for the excluded fiduciary to
2198 perform its duties; and

2199 (2) Any other material information that the excluded
2200 fiduciary would be required to disclose to the specified
2201 beneficiaries under subsection (a) without regard to whether the
2202 terms of the trust relieve the excluded fiduciary from providing
2203 the information to qualified beneficiaries. Neither the
2204 performance nor the failure to perform of a trust advisor, trust
2205 protector, or other fiduciary designated by the terms of the trust
2206 as provided in this subsection shall affect the limitation on the
2207 liability of any excluded fiduciary provided by Article 12 of this
2208 chapter.



2209 **SECTION 72.** The following shall be codified as Section
2210 91-8-814, Mississippi Code of 1972:

2211 91-8-814. **Exercise of powers over discretionary and other**
2212 **interests; tax savings.** (a) Relative to exercise of powers over
2213 discretionary and other interests:

2214 (1) "Improper motive" means to demonstrate action such
2215 as the following:

2216 (A) A trustee refusing to make or limiting
2217 distributions to beneficiaries other than the trustee due to the
2218 trustee's self-interest when the trustee also holds a beneficial
2219 interest subject to a discretionary interest; or

2220 (B) A trustee making a distribution in excess of
2221 an ascertainable standard to himself or herself as beneficiary
2222 when the trustee is restricted by an ascertainable standard in the
2223 trust.

2224 (2) Unless otherwise provided in the trust:

2225 (A) If the settlor's spouse is named as a
2226 beneficiary, the settlor's spouse is still living and the trust is
2227 classified as a support trust, then the trustee shall consider the
2228 resources of the settlor's spouse, including the settlor's
2229 obligation of support, before making a distribution; and

2230 (B) In all other cases, unless otherwise provided
2231 in the trust, the trustee need not consider the beneficiary's
2232 resources in determining whether a distribution should be made.



2233 (b) The following provisions apply only to discretionary
2234 interests:

2235 (1) A discretionary interest is neither a property
2236 interest nor an enforceable right; it is a mere expectancy;

2237 (2) A court may review a trustee's distribution
2238 discretion only if the trustee acts dishonestly, acts with an
2239 improper motive, or fails to act, if under a duty to do so;

2240 (3) A reasonableness standard shall not be applied to
2241 the exercise of discretion by the trustee with regard to a
2242 discretionary interest;

2243 (4) Other than for the three (3) circumstances listed
2244 in subsection (b) (2), a court has no jurisdiction to review the
2245 trustee's discretion or to force a distribution; and

2246 (5) Absent express language in the trust instrument to
2247 the contrary, if the distribution language in a discretionary
2248 interest permits unequal distributions between beneficiaries or
2249 distributions to the exclusion of other beneficiaries, the trustee
2250 may distribute all of the accumulated, accrued, or undistributed
2251 income and principal to one (1) beneficiary in the trustee's
2252 discretion.

2253 (c) The following provisions apply only to mandatory or
2254 support interests:

2255 (1) A beneficiary of a mandatory or a support interest
2256 has an enforceable right to a distribution pursuant to a court's
2257 review;



2258 (2) A trustee's distribution decision may be reviewed
2259 for unreasonableness, dishonesty, improper motivation, or failure
2260 to act, if under a duty to do so; and

2261 (3) In the case of a support interest, nothing in this
2262 section shall raise a beneficiary's support interest to the level
2263 of a property interest.

2264 (d) Unless otherwise provided in subsection (f), and unless
2265 the terms of the trust expressly indicate that a rule in this
2266 subsection does not apply:

2267 (1) A person other than a settlor who is a beneficiary
2268 and trustee of a trust that confers on the trustee a power to make
2269 discretionary distributions to or for the trustee's personal
2270 benefit may exercise the power only in accordance with an
2271 ascertainable standard; and

2272 (2) A trustee may not exercise a power to make
2273 discretionary distributions to satisfy a legal obligation of
2274 support that the trustee personally owes another person.

2275 (e) A power that is limited or prohibited by subsection (d)
2276 may be exercised by a majority of the remaining trustees whose
2277 exercise of the power is not so limited or prohibited. If the
2278 power of all trustees is so limited or prohibited, the court may
2279 appoint a special fiduciary with authority to exercise the power.

2280 (f) Subsection (d) shall not apply to:

2281 (1) A power held by the settlor's spouse who is the
2282 trustee of a trust for which a marital deduction, as defined in



2283 Section 2056(b) (5) or 2523(e) of the Internal Revenue Code, was
2284 previously allowed;

2285 (2) Any trust during any period that the trust may be
2286 revoked or amended by its settlor; or

2287 (3) A trust if contributions to the trust qualify for
2288 the annual exclusion under Section 2503(c) of the Internal Revenue
2289 Code.

2290 **SECTION 73.** The following shall be codified as Section
2291 91-8-815, Mississippi Code of 1972:

2292 91-8-815. **General powers of trustee.** (a) A trustee,
2293 without authorization by the court, may exercise:

2294 (1) Powers conferred by the terms of the trust; and

2295 (2) Except as limited by the terms of the trust:

2296 (A) All powers over the trust property which an
2297 unmarried competent owner has over individually owned property;

2298 (B) Any other powers appropriate to achieve the
2299 proper investment, management, and distribution of the trust
2300 property; and

2301 (C) Any other powers conferred by this chapter.

2302 (b) The exercise of a power is subject to the fiduciary
2303 duties prescribed by this article.

2304 **SECTION 74.** The following shall be codified as Section
2305 91-8-816, Mississippi Code of 1972:

2306 91-8-816. **Specific powers of trustee.** (a) Any references
2307 contained in a will or trust incorporating by reference the powers



2308 enumerated in Section 91-9-101 et seq. will incorporate by
2309 reference the powers contained in this section.

2310 (b) Unless the terms of the instrument expressly provide
2311 otherwise and without limiting the authority conferred by Section
2312 91-8-815, a trustee may:

2313 (1) Collect trust property and accept or reject
2314 additions to the trust property from a settlor or any other
2315 person;

2316 (2) Acquire or sell property, for cash or on credit, at
2317 public or private sale;

2318 (3) Exchange, partition, or otherwise change the
2319 character of trust property;

2320 (4) Deposit trust money in an account in a regulated
2321 financial-service institution;

2322 (5) Borrow money, with or without security, and
2323 mortgage or pledge trust property for a period within or extending
2324 beyond the duration of the trust;

2325 (6) With respect to an interest in a proprietorship,
2326 partnership, limited liability company, business trust,
2327 corporation, or other form of business or enterprise, continue the
2328 business or other enterprise and take any action that may be taken
2329 by shareholders, members, or property owners, including merging,
2330 dissolving, or otherwise changing the form of business
2331 organization or contributing additional capital;



2332 (7) With respect to stocks or other securities,
2333 exercise the rights of an absolute owner, including the right to:
2334 (A) Vote, or give proxies to vote, with or without
2335 power of substitution, or enter into or continue a voting trust
2336 agreement;
2337 (B) Hold a security in the name of a nominee or in
2338 other form without disclosure of the trust so that title may pass
2339 by delivery;
2340 (C) Pay calls, assessments, and other sums
2341 chargeable or accruing against the securities, and sell or
2342 exercise stock subscription or conversion rights; and
2343 (D) Deposit the securities with a depository or
2344 other regulated financial-service institution;
2345 (8) With respect to an interest in real property,
2346 construct or make ordinary or extraordinary repairs to,
2347 alterations to, or improvements in, buildings or other structures,
2348 demolish improvements, raze existing or erect new party walls or
2349 buildings, subdivide or develop land, dedicate land to public use
2350 or grant public or private easements, and make or vacate plats and
2351 adjust boundaries;
2352 (9) Enter into a lease for any purpose as lessor or
2353 lessee, including a lease or other arrangement for exploration and
2354 removal of natural resources, with or without the option to
2355 purchase or renew, for a period within or extending beyond the
2356 duration of the trust;



2357 (10) Grant an option involving a sale, lease, or other
2358 disposition of trust property or acquire an option for the
2359 acquisition of property, including an option exercisable beyond
2360 the duration of the trust, and exercise an option so acquired;

2361 (11) Insure the property of the trust against damage or
2362 loss and insure the trustee, the trustee's agents, and
2363 beneficiaries against liability arising from the administration of
2364 the trust;

2365 (12) Abandon or decline to administer property of no
2366 value or of insufficient value to justify its collection or
2367 continued administration;

2368 (13) With respect to possible liability for violation
2369 of environmental law:

2370 (A) Inspect or investigate property the trustee
2371 holds or has been asked to hold, or property owned or operated by
2372 an organization in which the trustee holds or has been asked to
2373 hold an interest, for the purpose of determining the application
2374 of environmental law with respect to the property;

2375 (B) Take action to prevent, abate, or otherwise
2376 remedy any actual or potential violation of any environmental law
2377 affecting property held directly or indirectly by the trustee,
2378 whether taken before or after the assertion of a claim or the
2379 initiation of governmental enforcement;



2380 (C) Decline to accept property into trust or
2381 disclaim any power with respect to property that is or may be
2382 burdened with liability for violation of environmental law;

2383 (D) Compromise claims against the trust which may
2384 be asserted for an alleged violation of environmental law; and

2385 (E) Pay the expense of any inspection, review,
2386 abatement, or remedial action to comply with environmental law;

2387 (14) Pay or contest any claim, settle a claim by or
2388 against the trust, and release, in whole or in part, a claim
2389 belonging to the trust;

2390 (15) Pay taxes, assessments, compensation of the
2391 trustee and of employees and agents of the trust, and other
2392 expenses incurred in the administration of the trust;

2393 (16) Exercise elections with respect to federal, state,
2394 and local taxes, including allocating capital gains to
2395 distributable net income;

2396 (17) Select a mode of payment under any employee
2397 benefit or retirement plan, annuity, or life insurance payable to
2398 the trustee, exercise rights thereunder, including exercise of the
2399 right to indemnification for expenses and against liabilities, and
2400 take appropriate action to collect the proceeds;

2401 (18) Make loans out of trust property, including loans
2402 to a beneficiary on terms and conditions the trustee considers to
2403 be fair and reasonable under the circumstances, where the trustee
2404 has a lien on future distributions for repayment of those loans;



2405 (19) Pledge trust property to guarantee loans made by
2406 others to the beneficiary;

2407 (20) Appoint a trustee to act in another jurisdiction
2408 with respect to trust property located in the other jurisdiction,
2409 confer upon the appointed trustee all of the powers and duties of
2410 the appointing trustee, require that the appointed trustee furnish
2411 security, and remove any trustee so appointed;

2412 (21) Pay an amount distributable to a beneficiary who
2413 is under a legal disability or who the trustee reasonably believes
2414 is incapacitated, by paying it directly to the beneficiary or
2415 applying it for the beneficiary's benefit, or by:

2416 (A) Paying it to the conservator or guardian of
2417 the beneficiary's estate or, if there is no conservator or
2418 guardian of the beneficiary's estate, to the conservator or
2419 guardian of the beneficiary;

2420 (B) Paying it to the beneficiary's custodian under
2421 the Uniform Transfers to Minors Act, and, for that purpose,
2422 creating a custodianship or custodial trust;

2423 (C) If the trustee does not know of a conservator,
2424 guardian, custodian, or custodial trustee, paying it to an adult
2425 relative or other person having legal or physical care or custody
2426 of the beneficiary, to be expended on the beneficiary's behalf; or

2427 (D) Managing it as a separate fund on the
2428 beneficiary's behalf, subject to the beneficiary's continuing
2429 right to withdraw the distribution;



2430 (22) On distribution of trust property or the division
2431 or termination of a trust, make distributions in divided or
2432 undivided interests, allocate particular assets in proportionate
2433 or disproportionate shares, value the trust property for those
2434 purposes, and adjust for resulting differences in valuation and
2435 basis for income tax purposes;

2436 (23) Resolve a dispute concerning the interpretation of
2437 the trust or its administration by mediation, arbitration, or
2438 other procedure for alternative dispute resolution;

2439 (24) Prosecute or defend an action, claim, or judicial
2440 proceeding in any jurisdiction to protect trust property and the
2441 trustee in the performance of the trustee's duties;

2442 (25) Sign and deliver contracts and other instruments
2443 that are useful to achieve or facilitate the exercise of the
2444 trustee's powers;

2445 (26) On termination of the trust, exercise the powers
2446 appropriate to windup the administration of the trust and
2447 distribute the trust property to the persons entitled to it;

2448 (27) Employ persons, including attorneys, auditors,
2449 investment advisors or agents, even if they are associated with
2450 the trustee, to advise or assist the trustee in the performance of
2451 his administrative duties; to act without independent
2452 investigation upon their recommendations; and instead of acting
2453 personally, to employ one or more agents to perform any act of
2454 administration, whether or not discretionary; and



2455 (28) (A) A trustee may insure the life of any person
2456 in which the trustee of the trust has an insurable interest as set
2457 forth in Section 83-5-251.

2458 (B) A trustee may retain any life insurance policy
2459 contributed to a trust by a settlor, or purchased by the trustee
2460 upon the request of the settlor, as an asset of the trust without
2461 regard to any lack of diversification caused thereby and without
2462 regard to the terms and conditions of the life insurance policy.
2463 The trustee shall not be liable for lack of diversification to any
2464 beneficiary of a trust for the trustee's retention of the life
2465 insurance policy.

2466 (C) With respect to a life insurance policy owned
2467 by the trust a trustee may:

2468 (i) Borrow funds from any party, including an
2469 insurance company, for the purpose of paying premiums on any
2470 policy of insurance owned by the trust and enter into a "split
2471 dollar" or other similar arrangement;

2472 (ii) Collaterally assign any policy to a
2473 creditor of the trust;

2474 (iii) Exercise any and all rights under any
2475 life insurance policy, including the power to pay, forego or
2476 adjust the amount of any premium payments, adjust the type and
2477 amount of death benefit, receive or apply dividends to premiums or
2478 purchase additional insurance, and allocate policy values among



2479 any subaccounts available under any variable or similar policy;
2480 and

2481 (iv) With the consent of the insured, to sell
2482 any policy to a third party in a life settlement or viatical
2483 settlement transaction.

2484 **SECTION 75.** The following shall be codified as Section
2485 91-8-817, Mississippi Code of 1972:

2486 91-8-817. **Distribution upon termination.** (a) Upon
2487 termination or partial termination of a trust, the trustee may
2488 send to the beneficiaries a proposal for distribution. The right
2489 of any beneficiary to object to the proposed distribution
2490 terminates if the beneficiary does not notify the trustee of an
2491 objection within thirty (30) days after the proposal was sent but
2492 only if the proposal informed the beneficiary of the right to
2493 object and of the time allowed for objection. For the purpose of
2494 determining the date a proposed distribution was sent, if exact
2495 confirmation is unavailable it can be assumed it was received five
2496 (5) days after the date of mailing.

2497 (b) Upon the occurrence of an event terminating or partially
2498 terminating a trust, the trustee shall proceed expeditiously to
2499 distribute the trust property to the persons entitled to it,
2500 subject to the right of the trustee to retain a reasonable reserve
2501 for the payment of debts, expenses, and taxes.

2502 (c) A release by a beneficiary of a trustee from liability
2503 for breach of trust is invalid to the extent:



2504 (1) It was induced by improper conduct of the trustee;
2505 or

2506 (2) The beneficiary, at the time of the release, did
2507 not know of the material facts relating to the alleged breach and
2508 the trustee had actual knowledge of the facts relating to the
2509 alleged breach.

2510 **ARTICLE 9**

2511 **UNIFORM PRUDENT INVESTOR ACT**

2512 **SECTION 76.** The following shall be codified as Section
2513 91-8-901, Mississippi Code of 1972:

2514 91-8-901. **Prudent Investor Act Incorporated by Reference.**
2515 Title 91, Chapter 9, Article 13, the Mississippi Uniform Prudent
2516 Investor Act, is incorporated in this chapter by reference.

2517 **ARTICLE 10**

2518 **LIABILITY OF TRUSTEES AND RIGHTS OF PERSONS DEALING WITH TRUSTEE**

2519 **SECTION 77.** The following shall be codified as Section
2520 91-8-1001, Mississippi Code of 1972:

2521 91-8-1001. **Remedies for breach of trust.** (a) A violation
2522 by a trustee of a duty the trustee owes to a beneficiary is a
2523 breach of trust.

2524 (b) To remedy a breach of trust that has occurred or may
2525 occur, the court may:

2526 (1) Compel the trustee to perform the trustee's duties;
2527 (2) Enjoin the trustee from committing a breach of
2528 trust;



- 2529 (3) Compel the trustee to redress a breach of trust by
2530 paying money, restoring property, or other means;
- 2531 (4) Order a trustee to account;
- 2532 (5) Appoint a special fiduciary to take possession of
2533 the trust property and administer the trust;
- 2534 (6) Suspend the trustee;
- 2535 (7) Remove the trustee as provided in Section 91-8-706;
- 2536 (8) Reduce or deny compensation to the trustee;
- 2537 (9) Subject to Section 91-8-1012, void an act of the
2538 trustee, impose a lien or a constructive trust on trust property,
2539 or trace trust property wrongfully disposed of and recover the
2540 property or its proceeds; or
- 2541 (10) Order any other appropriate relief whether
2542 provided elsewhere in this chapter, available at common law or
2543 under equity principles.

2544 **SECTION 78.** The following shall be codified as Section
2545 91-8-1002, Mississippi Code of 1972:

2546 91-8-1002. **Damages for breach of trust.** (a) A trustee who
2547 commits a breach of trust is liable to the beneficiaries affected
2548 for:

2549 (1) The greater of:

2550 (A) The amount required to restore the value of
2551 the trust property and trust distributions to what they would have
2552 been had the breach not occurred; or



2553 (B) The profit the trustee made by reason of the
2554 breach; and

2555 (2) Any measure of damages otherwise provided by law.

2556 (b) Except as otherwise provided in this subsection (b), if
2557 more than one (1) trustee is liable to the beneficiaries for a
2558 breach of trust, a trustee is entitled to contribution from the
2559 other trustee or trustees. A trustee is not entitled to
2560 contribution if the trustee was substantially more at fault than
2561 another trustee or if the trustee committed the breach of trust in
2562 bad faith or with reckless indifference to the purposes of the
2563 trust or the interests of the beneficiaries. A trustee who
2564 received a benefit from the breach of trust is not entitled to
2565 contribution from another trustee to the extent of the benefit
2566 received.

2567 **SECTION 79.** The following shall be codified as Section
2568 91-8-1003, Mississippi Code of 1972:

2569 91-8-1003. **Damages in absence of breach.** Absent a breach of
2570 trust, a trustee is not liable to a beneficiary for a loss or
2571 depreciation in the value of trust property or for not having made
2572 a profit.

2573 **SECTION 80.** The following shall be codified as Section
2574 91-8-1004, Mississippi Code of 1972:

2575 91-8-1004. **Attorney's fees and costs.** (a) In a judicial
2576 proceeding involving the administration of a trust, the court, as
2577 justice and equity may require, may award costs and expenses,



2578 including reasonable attorney's fees, to any party, to be paid by
2579 another party or from the trust that is the subject of the
2580 controversy.

2581 (b) In a nonjudicial proceeding involving the administration
2582 of a trust, the trustee may pay fees, other reasonable costs, and
2583 expenses from trust assets where all of the parties to the
2584 proceeding agree in writing.

2585 (c) In a mediation or arbitration proceeding involving the
2586 administration of a trust, the mediator or arbitrator may award
2587 fees, other reasonable costs, and expenses against the assets of
2588 the trust.

2589 **SECTION 81.** The following shall be codified as Section
2590 91-8-1005, Mississippi Code of 1972:

2591 91-8-1005. **Limitation of action against trustee by a**
2592 **beneficiary, a trustee, trust advisor or trust protector.** (a) A
2593 beneficiary may not commence a proceeding against a trustee for
2594 breach of trust more than one (1) year after the date the
2595 beneficiary or a representative of the beneficiary was sent a
2596 report that adequately disclosed the existence of a potential
2597 claim for breach of trust.

2598 (b) A report adequately discloses the existence of a
2599 potential claim for breach of trust if it provides sufficient
2600 information so that the beneficiary or beneficiary's
2601 representative knows of the potential claim or has sufficient



2602 information to be presumed to know of it, or to be put on notice
2603 to inquire into its existence.

2604 (c) If subsection (a) does not apply, a judicial proceeding
2605 by a beneficiary against a trustee for breach of trust must be
2606 commenced within three (3) years after the first to occur of:

2607 (1) The removal, resignation, or death of the trustee;

2608 (2) The termination of the beneficiary's interest in
2609 the trust; or

2610 (3) The termination of the trust.

2611 (d) A trustee may not commence a proceeding against a
2612 cotrustee or a former trustee for breach of trust more than one
2613 (1) year after the date the trustee or a representative of the
2614 trustee was sent a report that adequately disclosed facts
2615 indicating the existence of a potential claim for breach of trust.

2616 (e) A report adequately discloses facts indicating the
2617 existence of a potential claim for breach of trust if it provides
2618 sufficient information so that the trustee or the trustee's
2619 representative knows of the potential claim or has sufficient
2620 information to be presumed to know of it, or to be put on notice
2621 to inquire into its existence.

2622 (f) If subsection (d) does not apply, a judicial proceeding
2623 by a trustee against a cotrustee or former trustee for breach of
2624 trust must be commenced within three (3) years after the first to
2625 occur of:



2626 (1) The removal, resignation, or death of the cotrustee
2627 or a former trustee;

2628 (2) The termination of the beneficiary's interest in
2629 the trust; or

2630 (3) The termination of the trust.

2631 (g) A trust advisor or trust protector may not commence a
2632 proceeding against a trustee or a former trustee for breach of
2633 trust more than one (1) year after the date the trust advisor or
2634 trust protector or the respective representative of each was sent
2635 a report that adequately disclosed facts indicating the existence
2636 of a potential claim for breach of trust.

2637 (h) A report adequately discloses facts indicating the
2638 existence of a potential claim for breach of trust if it provides
2639 sufficient information so that the trust advisor or trust
2640 protector or the respective representative of each knows of the
2641 potential claim or has sufficient information to be presumed to
2642 know of it, or to be put on notice to inquire into its existence.

2643 (i) If subsection (g) does not apply, a judicial proceeding
2644 by a trust advisor or trust protector against a trustee or former
2645 trustee for breach of trust must be commenced within three (3)
2646 years after the first to occur of:

2647 (1) The removal, resignation, or death of the trustee
2648 or a former trustee;

2649 (2) The termination of the beneficiary's interest in
2650 the trust; or



2651 (3) The termination of the trust.

2652 (j) Notwithstanding subsections (d) through (i), no trustee,
2653 trust advisor, or trust protector may commence a proceeding
2654 against a trustee or a former trustee if, under Section
2655 91-8-1005(a) through (c), none of the beneficiaries may commence a
2656 proceeding against the cotrustee or former trustee for the breach
2657 of trust.

2658 **SECTION 82.** The following shall be codified as Section
2659 91-8-1006, Mississippi Code of 1972:

2660 91-8-1006. **Reliance on trust instrument.** A trustee who acts
2661 in reasonable reliance on the terms of the trust as expressed in
2662 the trust instrument is not liable to a beneficiary for a breach
2663 of trust to the extent the breach resulted from the reliance.

2664 **SECTION 83.** The following shall be codified as Section
2665 91-8-1007, Mississippi Code of 1972:

2666 91-8-1007. **Event affecting administration or distribution.**
2667 If the happening of an event, including marriage, divorce,
2668 performance of educational requirements, or death, affects the
2669 administration or distribution of a trust, a trustee who has
2670 exercised reasonable care to ascertain the happening of the event
2671 is not liable for a loss resulting from the trustee's lack of
2672 knowledge.

2673 **SECTION 84.** The following shall be codified as Section
2674 91-8-1008, Mississippi Code of 1972:



2675 91-8-1008. **Exculpation of trustee.** (a) A provision of a
2676 trust relieving a trustee of liability for breach of trust is
2677 unenforceable to the extent that it:

2678 (1) Relieves the trustee of liability for breach of
2679 trust committed in bad faith or with reckless indifference to the
2680 purposes of the trust or the interests of the beneficiaries; or

2681 (2) Was inserted as the result of an abuse by the
2682 trustee of a fiduciary or confidential relationship to the
2683 settlor.

2684 (b) Except for provisions intended to provide protection for
2685 carrying out a stated purpose in the trust instrument, an
2686 exculpatory provision drafted or caused to be drafted by the
2687 trustee is invalid as an abuse of a fiduciary or confidential
2688 relationship unless the trustee proves that the exculpatory
2689 provision is fair under the circumstances and that its existence
2690 and contents were adequately communicated to the settlor.

2691 **SECTION 85.** The following shall be codified as Section
2692 91-8-1009, Mississippi Code of 1972:

2693 91-8-1009. **Beneficiary's consent, release, or ratification.**
2694 A trustee is not liable to a beneficiary for breach of trust if
2695 the beneficiary consented to the conduct constituting the breach,
2696 released the trustee from liability for the breach, or ratified
2697 the transaction constituting the breach, unless:

2698 (1) The consent, release, or ratification of the
2699 beneficiary was induced by improper conduct of the trustee; or



2700 (2) At the time of the consent, release, or
2701 ratification, the beneficiary did not know of the material facts
2702 relating to the breach and the trustee had actual knowledge of the
2703 facts relating to the alleged breach.

2704 **SECTION 86.** The following shall be codified as Section
2705 91-8-1010, Mississippi Code of 1972:

2706 91-8-1010. **Limitation on personal liability of trustee.** (a)

2707 Except as otherwise provided in the contract, a trustee is not
2708 personally liable on a contract properly entered into in the
2709 trustee's fiduciary capacity in the course of administering the
2710 trust if the trustee in the contract disclosed the fiduciary
2711 capacity.

2712 (b) Except as otherwise provided in subsection (a) or (c),
2713 the debts, obligations and liabilities incurred by a trustee by
2714 reason of the ownership, management, or control of trust property
2715 in the trustee's fiduciary capacity, shall be enforceable solely
2716 against the trust and its property, without any obligation or
2717 liability personally being borne by any trustee of the trust.

2718 (c) Except as otherwise limited by state law, a trustee is
2719 personally liable for torts committed in the course of
2720 administering a trust only if the trustee is personally at fault.

2721 (d) A claim based on a contract entered into by a trustee in
2722 the trustee's fiduciary capacity, on an obligation arising from
2723 ownership or control of trust property, or on a tort committed in
2724 the course of administering a trust, may be asserted in a judicial



2725 proceeding against the trustee in the trustee's fiduciary
2726 capacity, whether or not the trustee is personally liable for the
2727 claim.

2728 **SECTION 87.** The following shall be codified as Section
2729 91-8-1011, Mississippi Code of 1972:

2730 91-8-1011. **Interest as general partner.** (a) Except as
2731 otherwise provided in subsection (c) or unless personal liability
2732 is imposed in the contract, a trustee who holds an interest as a
2733 general partner in a general or limited partnership is not
2734 personally liable on a contract entered into by the partnership
2735 after the trust's acquisition of the interest if the fiduciary
2736 capacity was disclosed in the contract or in a statement
2737 previously filed pursuant to the Uniform Partnership Act, Title
2738 79, Chapter 13, Mississippi Code of 1972, or the Mississippi
2739 Limited Partnership Act, Title 79, Chapter 14, Mississippi Code of
2740 1972.

2741 (b) Except as otherwise provided in subsection (c), a
2742 trustee who holds an interest as a general partner is not
2743 personally liable for torts committed by the partnership or for
2744 obligations arising from ownership or control of the interest
2745 unless the trustee is personally at fault.

2746 (c) The immunity provided by this section does not apply if
2747 an interest in the partnership is held by the trustee in a
2748 capacity other than that of trustee.



2749 (d) If the trustee of a revocable trust holds an interest as
2750 a general partner, the settlor is personally liable for contracts
2751 and other obligations of the partnership as if the settlor were a
2752 general partner.

2753 **SECTION 88.** The following shall be codified as Section
2754 91-8-1012, Mississippi Code of 1972:

2755 91-8-1012. **Protection of person dealing with trustee.** (a)

2756 A person other than a beneficiary who in good faith assists a
2757 trustee, or who in good faith and for value deals with a trustee,
2758 without knowledge that the trustee is exceeding or improperly
2759 exercising the trustee's powers is protected from liability as if
2760 the trustee properly exercised the power.

2761 (b) A person other than a beneficiary who in good faith
2762 deals with a trustee is not required to inquire into the extent of
2763 the trustee's powers or the propriety of their exercise.

2764 (c) A person who in good faith delivers assets to a trustee
2765 need not ensure their proper application.

2766 (d) A person other than a beneficiary who in good faith
2767 assists a former trustee, or who in good faith and for value deals
2768 with a former trustee, without knowledge that the trusteeship has
2769 terminated is protected from liability as if the former trustee
2770 were still a trustee.

2771 (e) Comparable protective provisions of other laws relating
2772 to commercial transactions or transfer of securities by
2773 fiduciaries prevail over the protection provided by this section.



2774 **SECTION 89.** The following shall be codified as Section
2775 91-8-1013, Mississippi Code of 1972:

2776 91-8-1013. **Certification of trust.** (a) Instead of
2777 furnishing a copy of the trust instrument to any person to
2778 evidence the existence and validity of the trust, the trustee may
2779 furnish to the person a certification of trust, signed by the
2780 trustee or trustees having signature authority as identified in
2781 paragraph (5) of this subsection, attested by a notary public, and
2782 shall contain the following:

2783 (1) An affirmation of the current existence of the
2784 trust and the date on which the trust came into existence;

2785 (2) The identity of the settlor or settlors;

2786 (3) The identity and address of the currently acting
2787 trustee or trustees and may contain the identity and address of
2788 the named successor trustee or trustees or a statement that no
2789 successor is named;

2790 (4) The administrative or managerial powers of the
2791 trustee in a pending transaction or relevant to the request;

2792 (5) The revocability or irrevocability of the trust and
2793 the identity of any person holding a power to revoke the trust;

2794 (6) When there are multiple trustees or multiple
2795 successor trustees, the signature authority of the trustees
2796 indicating whether all or less than all of the currently acting
2797 trustees are required to sign in order to exercise various powers
2798 of the trustee;



2799 (7) Where there are successor trustees designated, a
2800 statement detailing the conditions for their succession or a
2801 statement that a third party may rely on the authority of one or
2802 more successors without proof of their succession;

2803 (8) The trust's Taxpayer Identification Number, whether
2804 a social security number or Employer Identification Number, but
2805 only if the trust's identification number is essential to the
2806 transaction for which the request for the trust document is made;

2807 (9) The name in which title to trust property may be
2808 taken; and

2809 (10) A statement that, to the best of the trustee's
2810 knowledge, the trust has not been revoked, modified, or amended in
2811 any manner that would cause the representations contained in the
2812 certification of trust to be incorrect.

2813 (b) The certification of trust shall not be required to
2814 contain the dispositive provisions of a trust that set forth the
2815 distribution of the trust estate.

2816 (c) The trustee offering the certification of trust may
2817 provide copies of all or any part of the trust document and
2818 amendments, if any. Nothing in this section is intended to
2819 require or imply an obligation to provide dispositive provisions
2820 of the trust or a copy of the entire trust documents and
2821 amendments.

2822 (d) A person who acts in reliance upon a certification of
2823 trust without knowledge that the representations contained therein



2824 are incorrect is not liable to any person for so acting. A person
2825 who does not have actual knowledge that the facts contained in the
2826 certification of trust are incorrect may assume without inquiry
2827 the existence of the facts contained in the certification. Actual
2828 knowledge shall not be inferred solely from the fact that a copy
2829 of all or part of the trust instrument is held by the person
2830 relying on the trust certification. Nothing contained in this
2831 section shall limit the rights of the beneficiaries of the trust
2832 against the trustee. Any person relying on the certification of
2833 trust shall be indemnified from the assets of the trust to the
2834 extent of the share of the trust attributable to the beneficiary
2835 or beneficiaries bringing any action against the person for any
2836 costs, damage, attorney fees, or other expenses incurred in
2837 defending any action against the person arising for the
2838 transaction to which a certification of trust related.

2839 (e) A person's failure to request a certification of trust
2840 does not affect the protections provided that person in this
2841 section. No inference that the person has not acted in good faith
2842 or that the person was negligent may be drawn from the failure of
2843 the person to request a certification of trust. Nothing in this
2844 section is intended to create an implication that a person is
2845 liable for acting in reliance on a certification of trust under
2846 circumstances where the requirements of this section are not
2847 satisfied.



2848 (f) Nothing in this section shall be construed to require a
2849 third party, when presented with a trust certificate, to enter
2850 into a contract with a trustee relating to trust assets or
2851 obligations, or to preclude a third party from demanding as a
2852 precondition to any contract that the trustee provide additional
2853 information in order to clarify any ambiguities or inconsistencies
2854 in the trust certificate.

2855 (g) This section does not limit the right of a person to
2856 obtain a copy of the trust instrument in a judicial proceeding
2857 concerning the trust.

2858 **SECTION 90.** The following shall be codified as Section
2859 91-8-1014, Mississippi Code of 1972:

2860 91-8-1014. **Enforcement of no-contest, in terrorem or**
2861 **forfeiture provisions.** (a) For the purposes of this section,
2862 "no-contest provision" includes a "no-contest provision," "in
2863 terrorem provision" or "forfeiture provision" of a trust
2864 instrument. A "no-contest provision" means a provision that, if
2865 given effect, would reduce or eliminate the interest of any
2866 beneficiary of the trust who, directly or indirectly, initiates or
2867 otherwise pursues:

2868 (1) Any action to contest the validity of the trust or
2869 the terms of the trust;

2870 (2) Any action to set aside or vary the terms of the
2871 trust;



2872 (3) Any action to challenge the acts of the trustee or
2873 other fiduciary of the trust in the performance of the trustee's
2874 or other fiduciary's duties as described in the terms of the
2875 trust; or

2876 (4) Any other act or proceedings to frustrate or defeat
2877 the settlor's intent as expressed in the terms of the trust.

2878 (b) With regard to whether the beneficiary sought, received
2879 or relied upon legal counsel, a no-contest provision shall be
2880 enforceable according to the express terms of the no-contest
2881 provision without regard to the beneficiary's good or bad faith in
2882 taking the action that would justify the complete or partial
2883 forfeiture of the beneficiary's interest in the trust under the
2884 terms of the no-contest provision unless probable cause exists for
2885 the beneficiary taking such action on the grounds of:

2886 (1) Fraud;

2887 (2) Duress;

2888 (3) Revocation;

2889 (4) Lack of testamentary capacity;

2890 (5) Undue influence;

2891 (6) Mistake;

2892 (7) Forgery; or

2893 (8) Irregularity in the execution of the trust
2894 instrument.

2895 (c) Subsection (b) shall not apply to:



2896 (1) Any action brought solely to challenge the acts of
2897 the trustee or other fiduciary of the trust to the extent that the
2898 trustee or other fiduciary has committed a breach of fiduciary
2899 duties or breach of trust;

2900 (2) Any action brought by the trustee or any other
2901 fiduciary serving under the terms of the trust, unless the trustee
2902 or other fiduciary is a beneficiary against whom the no-contest
2903 provision is otherwise enforceable;

2904 (3) Any agreement among the beneficiaries and any other
2905 interested persons in settlement of a dispute or resolution of any
2906 other matter relating to the trust, including, without limitation,
2907 any nonjudicial settlement agreement;

2908 (4) Any action to determine whether a proposed or
2909 pending motion, petition, or other proceeding constitutes a
2910 contest within the meaning of a no-contest provision;

2911 (5) Any action brought by a beneficiary or on behalf of
2912 any such beneficiary for a construction or interpretation of the
2913 terms of the trust; or

2914 (6) Any action brought by the Attorney General for a
2915 construction or interpretation of a charitable trust or a trust
2916 containing a charitable interest if a provision exists in a trust
2917 purporting to penalize a charity or charitable interest for
2918 contesting the trust if probable cause exists for instituting
2919 proceedings.



2920 (d) Pursuant to this section, courts shall enforce the
2921 settlor's intent as reflected in a no-contest provision to the
2922 greatest extent possible.

2923 **ARTICLE 11**

2924 **MISCELLANEOUS PROVISIONS**

2925 **SECTION 91.** The following shall be codified as Section
2926 91-8-1101, Mississippi Code of 1972:

2927 91-8-1101. **Uniformity of application and construction.** In
2928 applying and construing this chapter, consideration must be given
2929 to the need to promote uniformity of the law with respect to its
2930 subject matter among states that enact it.

2931 **SECTION 92.** The following shall be codified as Section
2932 91-8-1102, Mississippi Code of 1972:

2933 91-8-1102. **Electronic records and signatures.** The
2934 provisions of this chapter governing the legal effect, validity,
2935 or enforceability of electronic records or electronic signatures,
2936 and of contracts formed or performed with the use of such records
2937 or signatures, conform to the requirements of Section 102 of the
2938 Electronic Signatures in Global and National Commerce Act (15 USC
2939 Section 7002) and supersede, modify, and limit the requirements of
2940 the Electronic Signatures in Global and National Commerce Act.

2941 **SECTION 93.** The following shall be codified as Section
2942 91-8-1103, Mississippi Code of 1972:

2943 91-8-1103. **Severability clause.** If any provision of this
2944 chapter or its application to any person or circumstances is held



2945 invalid, the invalidity does not affect other provisions or
2946 applications of this chapter which can be given effect without the
2947 invalid provision or application, and to this end the provisions
2948 of this chapter are severable.

2949 **SECTION 94.** The following shall be codified as Section
2950 91-8-1106, Mississippi Code of 1972:

2951 91-8-1106. **Application to existing relationships.** (a)

2952 Except as otherwise provided in this chapter:

2953 (1) This chapter applies to all trusts created before,
2954 on, or after July 1, 2014;

2955 (2) This chapter applies to all judicial proceedings
2956 concerning trusts commenced on or after July 1, 2014;

2957 (3) This chapter applies to judicial proceedings
2958 concerning trusts commenced before July 1, 2014, unless the court
2959 finds that application of a particular provision of this chapter
2960 would substantially interfere with the effective conduct of the
2961 judicial proceedings or prejudice the rights of the parties, in
2962 which case the particular provision of this chapter does not apply
2963 and the superseded law applies;

2964 (4) Any rule of construction or presumption provided in
2965 this chapter applies to trust instruments executed before July 1,
2966 2014, unless there is a clear indication of a contrary intent in
2967 the terms of the trust; and

2968 (5) An act done before July 1, 2014, is not affected by
2969 this chapter.



2970 (b) If a right is acquired, extinguished, or barred upon the
2971 expiration of a prescribed period that has commenced to run under
2972 any other statute before July 1, 2014, that statute continues to
2973 apply to the right even if it has been repealed or superseded.

2974 **SECTION 95.** The following shall be codified as Section
2975 91-8-1107, Mississippi Code of 1972:

2976 91-8-1107. **Alter ego.** (a) Absent clear and convincing
2977 evidence, no settlor of an irrevocable trust may be deemed to be
2978 the alter ego of a trustee of such trust.

2979 (b) None of the following factors, by themselves or in
2980 combination, may be considered sufficient evidence for a court to
2981 conclude that the settlor controls a trustee, or is the alter ego
2982 of a trustee of such trust:

2983 (1) Any combination of the factors listed in Section
2984 91-8-1108 regarding dominion and control over a trust;

2985 (2) Isolated occurrences where the settlor has signed
2986 checks, made disbursements, or executed other documents related to
2987 the trust as a trustee, a trust advisor or a trust protector, when
2988 in fact the settlor was not a trustee, trust advisor or trust
2989 protector;

2990 (3) Making any requests for distributions on behalf of
2991 beneficiaries; or

2992 (4) Making any requests to the trustee to hold,
2993 purchase, or sell any trust property.



2994 **SECTION 96.** The following shall be codified as Section
2995 91-8-1108, Mississippi Code of 1972:

2996 91-8-1108. **Dominion and control over a trust.** In the event
2997 a person challenges a settlor's or a beneficiary's influence over
2998 a trust, none of the following factors, alone or in combination,
2999 shall enter into a determination that dominion and control over a
3000 trust exists:

3001 (1) The settlor or a beneficiary is serving as a
3002 trustee, a trust advisor, a trust protector, or other fiduciary as
3003 described in this Title 91;

3004 (2) The settlor or a beneficiary holds an unrestricted
3005 power to remove or replace a trustee, a trust advisor, a trust
3006 protector, or other fiduciary;

3007 (3) The settlor or a beneficiary is a trust
3008 administrator, a general partner of a partnership, a manager of a
3009 limited liability company, an officer of a corporation, or holds
3010 any other managerial function relative to any type of entity
3011 specified in this section, or relative to any other type of entity
3012 not so specified, and part or all of the trust property consists
3013 of an interest in such entity;

3014 (4) A person related by blood or adoption to the
3015 settlor or a beneficiary is appointed as a trustee, a trust
3016 advisor, a trust protector, or other fiduciary;



3017 (5) The settlor's or a beneficiary's agent, accountant,
3018 attorney, financial advisor, or friend is appointed as a trustee,
3019 a trust advisor, a trust protector, or other fiduciary;

3020 (6) A business associate is appointed as a trustee, a
3021 trust advisor, a trust protector, or other fiduciary;

3022 (7) A beneficiary holds any power of appointment over
3023 any or all of the trust property;

3024 (8) The settlor holds a power to substitute property of
3025 equivalent value for property held by the trust, regardless of
3026 whether such power is:

3027 (A) Held in a fiduciary or nonfiduciary capacity;

3028 (B) Exercisable with or without the approval of
3029 any person in a fiduciary capacity; or

3030 (C) Exercisable with or without the approval of
3031 any person having an interest adverse to such settlor;

3032 (9) A trustee, a trust advisor, a trust protector or
3033 other fiduciary has the power to loan trust property to the
3034 settlor for less than a full and adequate rate of interest or
3035 without adequate security;

3036 (10) Any language relative to the power to make any
3037 distribution provides for any discretion relative to such
3038 distribution;

3039 (11) The trust has only one (1) beneficiary eligible
3040 for current distributions; or



3041 (12) The beneficiary is serving as a cotrustee, or as a
3042 trust advisor or trust protector under Article 12, or as any other
3043 fiduciary.

3044 **SECTION 97.** The following shall be codified as Section
3045 91-8-1109, Mississippi Code of 1972:

3046 91-8-1109. **Protection of special needs trusts and other**
3047 **similar trusts for disabled persons.** Notwithstanding the
3048 provisions of this chapter that may otherwise be applicable to a
3049 trust, no provision thereof shall apply to any special needs
3050 trust, supplemental needs trust, or other similar trust
3051 established for a person with a disability as a beneficiary,
3052 including, without limitation, any trust established pursuant to
3053 the provisions of 42 USC Section 1396(p)(d)(4)A or C, as amended
3054 from time to time, or other similar federal or state statute, to
3055 the extent that the provision would disqualify the trust
3056 beneficiary at any time from eligibility for public needs-based
3057 assistance benefits for which the beneficiary would otherwise
3058 qualify.

3059 **ARTICLE 12**

3060 **TRUST ADVISORS AND TRUST PROTECTORS**

3061 **SECTION 98.** The following shall be codified as Section
3062 91-8-1201, Mississippi Code of 1972:

3063 91-8-1201. **Powers of trust advisors and trust protectors.**

3064 (a) A trust protector or trust advisor is any person, and may be
3065 a committee of more than one (1) person, other than a trustee, who



3066 under the terms of the trust has a power or duty with respect to a
3067 trust, including, but not limited to, one or more of the following
3068 powers:

3069 (1) The power to modify or amend the trust instrument
3070 to achieve favorable tax status or respond to changes in any
3071 applicable federal, state, or other tax law affecting the trust,
3072 including, but not limited to, any rulings, regulations, or other
3073 guidance implementing or interpreting such laws;

3074 (2) The power to amend or modify the trust instrument
3075 to take advantage of changes in the rule against perpetuities,
3076 laws governing restraints on alienation, or other state laws
3077 restricting the terms of the trust, the distribution of trust
3078 property, or the administration of the trust;

3079 (3) The power to appoint a successor trust protector or
3080 trust advisor;

3081 (4) The power to review and approve a trustee's trust
3082 reports or accountings;

3083 (5) The power to change the governing law or principal
3084 place of administration of the trust;

3085 (6) The power to remove and replace any trust advisor
3086 or trust protector for the reasons stated in the trust instrument;

3087 (7) The power to remove a trustee, cotrustee, or
3088 successor trustee, for the reasons stated in the trust instrument,
3089 and appoint a successor;



3090 (8) The power to consent to a trustee's or cotrustee's
3091 action or inaction in making distributions to beneficiaries;

3092 (9) The power to increase or decrease any interest of
3093 the beneficiaries in the trust, to grant a power of appointment to
3094 one or more trust beneficiaries, or to terminate or amend any
3095 power of appointment granted in the trust;

3096 (10) The power to perform a specific duty or function
3097 that would normally be required of a trustee or cotrustee;

3098 (11) The power to advise the trustee or cotrustee
3099 concerning any beneficiary;

3100 (12) The power to consent to a trustee's or cotrustee's
3101 action or inaction relating to investments of trust assets;

3102 (13) The power to direct the acquisition, disposition,
3103 or retention of any trust investment;

3104 (14) The power to terminate all or part of a trust;

3105 (15) The power to veto or direct all or part of any
3106 trust distribution;

3107 (16) The power to borrow money with or without
3108 security, and mortgage or pledge trust property for a period
3109 within or extending beyond the duration of the trust;

3110 (17) The power to make loans out of trust property,
3111 including, but not limited to, loans to a beneficiary on terms and
3112 conditions, including without interest, considered to be fair and
3113 reasonable under the circumstances;



3114 (18) The power to vote proxies and exercise all other
3115 rights of ownership relative to securities and business entities
3116 held by the trust;

3117 (19) The power to select one or more investment
3118 advisors, managers or counselors, including, but not limited to, a
3119 trustee, and delegate to them any of its powers; and

3120 (20) The power to direct the trustee with respect to
3121 any additional powers and discretions over investment and
3122 management of trust assets provided in the trust instrument.

3123 (b) The exercise of a power by a trust advisor or a trust
3124 protector shall be exercised in the sole and absolute discretion
3125 of the trust advisor or trust protector and shall be binding on
3126 all other persons.

3127 (c) Any power of a trust advisor or trust protector to
3128 directly or indirectly modify a trust may be granted
3129 notwithstanding the provisions of Sections 91-8-410 through
3130 91-8-412 and 91-8-414.

3131 (d) An excluded fiduciary may continue to follow the
3132 direction of a trust protector or trust advisor upon the
3133 incapacity or death of the grantor of a trust to the extent
3134 provided in the trust instrument.

3135 (e) Notwithstanding anything in this section to the
3136 contrary, no modification, amendment, or grant of a power of
3137 appointment with respect to a trust, all of whose beneficiaries
3138 are charitable organizations, may authorize a trust protector or



3139 trust advisor to grant a beneficial interest in the trust to any
3140 noncharitable interest or purpose.

3141 **SECTION 99.** The following shall be codified as Section
3142 91-8-1202, Mississippi Code of 1972:

3143 91-8-1202. **Trust advisors and trust protectors as**

3144 **fiduciaries.** (a) A trust advisor or trust protector, other than
3145 a beneficiary, is a fiduciary with respect to each power granted
3146 to the trust advisor or trust protector. In exercising any power
3147 or refraining from exercising any power, a trust advisor or trust
3148 protector shall act in good faith and in accordance with the terms
3149 and purposes of the trust and the interests of the beneficiaries.

3150 (b) A trust advisor or trust protector is an excluded
3151 fiduciary with respect to each power granted or reserved
3152 exclusively to any one or more other trustees, trust advisors, or
3153 trust protectors.

3154 **SECTION 100.** The following shall be codified as Section
3155 91-8-1203, Mississippi Code of 1972:

3156 91-8-1203. **Trust advisor and trust protector subject to**

3157 **court jurisdiction.** By accepting appointment to serve as a trust
3158 advisor or trust protector, the trust advisor or the trust
3159 protector submits personally to the jurisdiction of the courts of
3160 this state even if investment advisory agreements or other related
3161 agreements provide otherwise, and the trust advisor or trust
3162 protector may be made a party to any action or proceeding relating



3163 to a decision, action, or inaction of the trust advisor or trust
3164 protector.

3165 **SECTION 101.** The following shall be codified as Section
3166 91-8-1204, Mississippi Code of 1972:

3167 91-8-1204. **No duty to review actions of trustee, trust**
3168 **advisor, or trust protector.** (a) Whenever, pursuant to the terms
3169 of a trust, an excluded fiduciary is to follow the direction of a
3170 trustee, trust advisor, or trust protector with respect to
3171 investment decisions, distribution decisions, or other decisions
3172 of the nonexcluded fiduciary, then, except to the extent that the
3173 terms of the trust provide otherwise, the excluded fiduciary shall
3174 have no duty to:

3175 (1) Review, evaluate, perform investment reviews,
3176 suitability reviews, inquiries, or investigations, or in any other
3177 way monitor the conduct of the trustee, trust advisor, or trust
3178 protector;

3179 (2) Make recommendations or evaluations or in any way
3180 provide advice to the trustee, trust advisor, or trust protector
3181 or consult with the trustee, trust advisor, or trust protector; or

3182 (3) Communicate with or warn or apprise any beneficiary
3183 or third party concerning instances in which the excluded
3184 fiduciary would or might have exercised the excluded fiduciary's
3185 own discretion in a manner different from the manner directed by
3186 the trustee, trust advisor, or trust protector.



3187 (b) Absent provisions in the trust instrument to the
3188 contrary, the actions of the excluded fiduciary pertaining to
3189 matters within the scope of the trustee, trust advisor, or trust
3190 protector's authority, including, but not limited to, confirming
3191 that the trustee, trust advisor, or trust protector's directions
3192 have been carried out and recording and reporting actions taken at
3193 the trustee, trust advisor, or trust protector's direction or
3194 other information pursuant to Section 91-8-813, shall be deemed to
3195 be administrative actions taken by the excluded fiduciary solely
3196 to allow the excluded fiduciary to perform those duties assigned
3197 to the excluded fiduciary under the terms of the trust; those
3198 administrative actions, as well as any communications made by the
3199 excluded fiduciary to the trust advisor, trust protector, or any
3200 of their agents or persons they have selected to provide services
3201 to the trust, shall not be deemed to constitute an undertaking by
3202 the excluded fiduciary to monitor the trustee, trust advisor, or
3203 trust protector or otherwise participate in actions within the
3204 scope of the trustee's, trust advisor's, or trust protector's
3205 authority.

3206 **SECTION 102.** The following shall be codified as Section
3207 91-8-1205, Mississippi Code of 1972:

3208 91-8-1205. **Fiduciary's liability for action or inaction of**
3209 **trustee, trust advisor, and trust protector.** An excluded
3210 fiduciary is not liable, either individually or as a fiduciary,
3211 for:



3212 (1) Any loss resulting from compliance with a direction
3213 of a trustee, trust advisor, or trust protector, including, but
3214 not limited to, any loss from the trustee, trust advisor, or trust
3215 protector breaching fiduciary responsibilities or acting beyond
3216 the trustee's, trust advisor's, or trust protector's scope of
3217 authority;

3218 (2) Any loss resulting from any action or inaction of a
3219 trustee, trust advisor, or trust protector; or

3220 (3) Any loss that results from the failure of a
3221 trustee, trust advisor, or trust protector to take any action
3222 proposed by the excluded fiduciary where the action requires the
3223 authorization of the trustee, trust advisor, or trust protector,
3224 if an excluded fiduciary who had a duty to propose the action
3225 timely sought but failed to obtain the authorization.

3226 **SECTION 103.** The following shall be codified as Section
3227 91-8-1206, Mississippi Code of 1972:

3228 91-8-1206. **Limitation of action against trust advisor or**
3229 **trust protector.** (a) A beneficiary may not commence a proceeding
3230 against a trust advisor or trust protector for breach of trust
3231 more than one (1) year after the date the beneficiary or a
3232 representative of the beneficiary was sent a report that
3233 adequately disclosed facts indicating the existence of a potential
3234 claim for breach of trust.

3235 (b) A report adequately discloses facts indicating the
3236 existence of a potential claim for breach of trust if it provides



3237 sufficient information so that the beneficiary or the
3238 beneficiary's representative knows of the potential claim or has
3239 sufficient information to be presumed to know of it, or to be put
3240 on notice to inquire into its existence.

3241 (c) If subsection (a) does not apply, a judicial proceeding
3242 by a beneficiary against a trust advisor or trust protector for
3243 breach of trust must be commenced within three (3) years after the
3244 first to occur of:

3245 (1) The removal, resignation, or death of the trust
3246 advisor or trust protector;

3247 (2) The termination of the beneficiary's interest in
3248 the trust; or

3249 (3) The termination of the trust.

3250 (d) A trustee may not commence a proceeding against a trust
3251 advisor or trust protector for breach of trust more than one (1)
3252 year after the date the trustee or a representative of the trustee
3253 was sent a report that adequately disclosed facts indicating the
3254 existence of a potential claim for breach of trust.

3255 (e) A report adequately discloses facts indicating the
3256 existence of a potential claim for breach of trust if it provides
3257 sufficient information so that the trustee or the trustee's
3258 representative knows of the potential claim or has sufficient
3259 information to be presumed to know of it, or to be put on notice
3260 to inquire into its existence.



3261 (f) If subsection (d) does not apply, a judicial proceeding
3262 by a trustee against a trust advisor or trust protector for breach
3263 of trust must be commenced within three (3) years after the first
3264 to occur of:

3265 (1) The removal, resignation, or death of the trust
3266 advisor or trust protector;

3267 (2) The termination of the beneficiary's interest in
3268 the trust; or

3269 (3) The termination of the trust.

3270 (g) A trust advisor or trust protector may not commence a
3271 proceeding against another trust advisor or another trust
3272 protector for breach of trust more than one (1) year after the
3273 date the trust advisor or trust protector or the respective
3274 representative of each was sent a report that adequately disclosed
3275 facts indicating the existence of a potential claim for breach of
3276 trust.

3277 (h) A report adequately discloses facts indicating the
3278 existence of a potential claim for breach of trust if it provides
3279 sufficient information so that the trust advisor or trust
3280 protector or the respective representative of each knows of the
3281 potential claim or has sufficient information to be presumed to
3282 know of it, or to be put on notice to inquire into its existence.

3283 (i) If subsection (g) does not apply, a judicial proceeding
3284 by a trust advisor or trust protector against another trust



3285 advisor or another trust protector for breach of trust must be
3286 commenced within three (3) years after the first to occur of:

3287 (1) The removal, resignation, or death of the other
3288 trust advisor or other trust protector;

3289 (2) The termination of the beneficiary's interest in
3290 the trust; or

3291 (3) The termination of the trust.

3292 (j) Notwithstanding subsections (d) through (i), no trustee,
3293 trust advisor, or trust protector may commence a proceeding
3294 against a trust advisor or trust protector or another trust
3295 advisor or another trust protector if, under either subsections
3296 (a) through (c) or Section 91-8-1005(a) through (c), none of the
3297 beneficiaries may commence a proceeding against the trust advisor
3298 or trust protector for such breach of trust.

3299 **SECTION 104.** The codifier is directed to codify Sections 1
3300 through 104 of this act as Title 91, Chapter 8, Mississippi Code
3301 of 1972.

3302 **SECTION 105.** Sections 91-9-1, 91-9-2, 91-9-3, 91-9-5, 91-9-7
3303 and 91-9-9, Mississippi Code of 1972, which comprise Title 91,
3304 Chapter 9, Article 1, Trusts - General Provisions, are repealed.

3305 **SECTION 106.** Sections 91-9-101, 91-9-103, 91-9-105,
3306 91-9-107, 91-9-109, 91-9-111, 91-9-113, 91-9-115, 91-9-117 and
3307 91-9-119, Mississippi Code of 1972, which comprise Title 91,
3308 Chapter 9, Article 3, Uniform Trustee Powers, are repealed.



3309 **SECTION 107.** Sections 91-9-201, 91-9-203, 91-9-205,
3310 91-9-207, 91-2-209, 91-9-211 and 91-9-213, Mississippi Code of
3311 1972, which comprise Title 91, Chapter 9, Article 5, Resignation
3312 And Succession of Trustees, are repealed.

3313 **SECTION 108.** Sections 91-9-301, 91-9-303 and 91-9-305, which
3314 comprise Title 91, Chapter 9, Article 7, Removal of Trustees, are
3315 repealed.

3316 **SECTION 109.** This act shall take effect and be in force from
3317 and after July 1, 2014.

