

SENATE BILL NO. 333

INTRODUCED BY MAZUREK, CRIPPEN, BISHOP

IN THE SENATE

FEBRUARY 3, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
FEBRUARY 11, 1989	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 13, 1989	PRINTING REPORT.
FEBRUARY 14, 1989	SECOND READING, DO PASS.
FEBRUARY 15, 1989	ENGROSSING REPORT.
FEBRUARY 16, 1989	THIRD READING, PASSED. AYES, 48; NOES, 0.
	TRANSMITTED TO HOUSE.

IN THE HOUSE

FEBRUARY 16, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
FEBRUARY 20, 1989	FIRST READING.
MARCH 8, 1989	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
MARCH 11, 1989	SECOND READING, CONCURRED IN AS AMENDED.
MARCH 14, 1989	THIRD READING, CONCURRED IN. AYES, 98; NOES, 0.
	RETURNED TO SENATE WITH AMENDMENTS.

IN THE SENATE

APRIL 1, 1989	SECOND READING, AMENDMENTS NOT
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CONCURRED IN.

APRIL 4, 1989

ON MOTION, FREE CONFERENCE COMMITTEE  
REQUESTED AND APPOINTED.

IN THE HOUSE

APRIL 6, 1989

ON MOTION, FREE CONFERENCE COMMITTEE  
REQUESTED AND APPOINTED.

IN THE SENATE

APRIL 6, 1989

FREE CONFERENCE COMMITTEE REPORTED.

APRIL 11, 1989

SECOND READING, FREE CONFERENCE  
COMMITTEE REPORT ADOPTED.

IN THE HOUSE

APRIL 11, 1989

THIRD READING, FREE CONFERENCE  
COMMITTEE REPORT ADOPTED.

IN THE SENATE

APRIL 13, 1989

THIRD READING, FREE CONFERENCE  
COMMITTEE REPORT ADOPTED.

RECEIVED FROM HOUSE.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

INTRODUCED BY

Rios

BILL NO. 333

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE LAWS RELATING TO TRUSTS AND TRUSTEES; AMENDING SECTIONS 2-2-103, 31-2-209, 70-20-101, AND 82-1-304, MCA; AND REPEALING SECTIONS 72-12-101 THROUGH 72-12-103, TITLE 72, CHAPTERS 20 THROUGH 25, AND SECTIONS 72-27-101 AND 72-27-102, MCA."

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

NEW SECTION. Section 1. Short title. [Sections 1 through 215] shall be known and may be cited as the "Trust Code".

NEW SECTION. Section 2. General rule concerning application of trust code. Except as otherwise provided by statute:

(1) After September 30, 1989, [sections 1 through 215] apply to all trusts regardless of when they were created, unless in the opinion of the court, application of a particular provision of [sections 1 through 215] would substantially interfere with the rights of the parties and other interested persons, in which case the particular provision of [sections 1 through 215] does not apply and prior law applies.

(2) After September 30, 1989, [sections 1 through 215] apply to all proceedings concerning trusts whenever commenced, unless in the opinion of the court, application of a particular provision of [sections 1 through 215] would substantially interfere with the effective conduct of the proceedings or the rights of the parties and other interested persons, in which case the particular provision of [sections 1 through 215] does not apply and prior law applies.

NEW SECTION. Section 3. Common law as law of state. Except to the extent that the common law rules governing trusts are modified by statute, the common law as to trusts is the law of this state.

NEW SECTION. Section 4. Constructive and resulting trusts not affected. Other than [sections 19 through 23], nothing in [sections 1 through 215] affects the law relating to constructive or resulting trusts.

NEW SECTION. Section 5. Application of code to charitable trusts. Unless otherwise provided by statute, [sections 1 through 215] apply to charitable trusts that are subject to the jurisdiction of the attorney general.

NEW SECTION. Section 6. Laws affecting construction and operation of wills apply to trusts. (1) Title 72, chapter 2, part 5 and 72-3-901 apply to the construction and operation of trusts, except as provided in subsection (2).

1 (2) This section does not apply to any trust if its  
2 terms expressly or by necessary implication make this  
3 section inapplicable to it.

4 (3) For purposes of [sections 1 through 215],  
5 references in Title 72, chapter 2, part 5 and in 72-3-901 to  
6 a "testator" refer to the trustor, references to a "will"  
7 refer to a trust, references to a "devisee" refer to a trust  
8 beneficiary, and references to a "devise" refer to a trust  
9 distribution.

10 **NEW SECTION. Section 7. Definitions.** As used in  
11 [sections 1 through 215] unless the context requires  
12 otherwise the following definitions apply:

13 (1) "Beneficiary" means a person who has any present  
14 or future interest, vested or contingent, and also includes  
15 the owner of an interest by assignment or other transfer  
16 and, as it relates to a charitable trust, includes any  
17 person entitled to enforce the trust.

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

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

23 (4) "Trust" when not qualified by the word "resulting"  
24 or "constructive", includes any express trust, private or  
25 charitable, with additions thereto, wherever and however

1 created. It also includes a trust created or determined by  
2 judgment or decree under which the trust is to be  
3 administered in the manner of an express trust. The term  
4 does not include conservatorships, personal representatives,  
5 custodial arrangements pursuant to chapter 26 of this title,  
6 business trusts providing for certificates to be issued to  
7 beneficiaries, common trust funds, voting trusts, security  
8 arrangements, liquidation trusts, and trusts for the primary  
9 purpose of paying debts, dividends, interest, salaries,  
10 wages, profits, pensions, or employee benefits of any kind  
11 and any arrangement under which a person is nominee or  
12 escrowee for another.

13 (5) "Trustee" means the person holding property in  
14 trust. The term includes an original, additional, or  
15 successor trustee, whether or not appointed or confirmed by  
16 a court.

17 (6) "Trustor" means the person who creates a trust.

18 (7) "Trust company" means an entity which has  
19 qualified to engage in and conduct a trust business in this  
20 state.

21 (8) "Trust property" means the property held in trust.

22 **NEW SECTION. Section 8. Reference to statutes --**  
23 **amendments and additions.** Whenever a reference is made to  
24 any portion of [sections 1 through 215] or to any other law,  
25 the reference applies to all amendments and additions made.

**NEW SECTION. Section 9. Methods of creating trust.**

Subject to other provisions of [sections 1 through 72], a trust may be created by any of the following methods:

(1) a declaration by the owner of property that the owner holds the property as trustee;

(2) a transfer of property by the owner during the owner's lifetime to another person as trustee;

(3) a testamentary transfer of property by the owner to another person as trustee;

(4) an exercise of a power of appointment to another person as trustee; or

(5) an enforceable promise to create a trust.

**NEW SECTION. Section 10. Intention to create trust.**

A trust is created only if the trustor properly manifests an intention to create a trust.

**NEW SECTION. Section 11. Trust property.** (1) A trust is created only if there is trust property.

(2) The requirement of subsection (1) may be satisfied if the trust (or its trustee) is designated to be beneficiary of the proceeds of an insurance contract, an annuity contract, an employee benefit plan, an individual retirement account, or similar device, even though the designation may be revoked.

**NEW SECTION. Section 12. Trust purpose.** A trust may

be created for any purpose that is not illegal or against

public policy.

**NEW SECTION. Section 13. Trust for indefinite or general purposes.** A trust created for an indefinite or general purpose is not invalid for that reason if it can be determined with reasonable certainty that a particular use of the trust property comes within that purpose.

**NEW SECTION. Section 14. Designation of beneficiary.**

(1) A trust, other than a charitable trust, is created only if there is a beneficiary.

(2) The requirement of subsection (1) is satisfied if the trust instrument provides for either of the following:

(a) a beneficiary or class of beneficiaries that is ascertainable with reasonable certainty or that is sufficiently described so it can be determined that some person meets the description or is within the class; or

(b) a grant of power to the trustee or some other person to select the beneficiaries based on a standard or in the discretion of the trustee or other person.

**NEW SECTION. Section 15. Designation of trust or trustee as beneficiary.** (1) A trust or trustee may be designated as the beneficiary of the proceeds of an insurance contract, an annuity contract, an employee benefit plan, an individual retirement account, or similar device if the designation is made in accordance with the contract, plan, account, or device.

(2) Subsection (1) applies even though the trust or trustee is named or to be named by will or trust and whether or not the will or trust is in existence at the time of the designation.

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

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

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

(3) by operation of law.

**NEW SECTION. Section 17. Consideration.** Consideration is not required to create a trust, but a promise to create a trust in the future is enforceable only if the requirements for an enforceable contract are satisfied.

**NEW SECTION. Section 18. Exception to doctrine of merger.** If a trust provides for one or more successor beneficiaries after the death of the trustor, the trust is not invalid, merged, or terminated in either of the following circumstances:

(1) where there is one trustor who is the sole trustee and the sole beneficiary during the trustor's lifetime; or

(2) where there are two or more trustors, one or more of whom are trustees, and the beneficial interest in the

trust is in one or more of the trustors during the lifetime of the trustors.

**NEW SECTION. Section 19. Resulting trust upon failure of trust.** Where the owner of property gratuitously transfers it and manifests in the trust instrument an intention that the transferee should hold the property in trust but the trust fails, the transferee holds the trust estate as a resulting trust for the transferor or his estate, unless:

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

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

**NEW SECTION. Section 20. Resulting trust upon full performance of trust.** Where the owner of property gratuitously transfers it subject to a trust which is properly declared and which is fully performed without exhausting the trust estate, the trustee holds the surplus as a resulting trust for the transferor or his estate, unless the transferor manifested in the trust instrument an intention that no resulting trust of the surplus should arise.

**NEW SECTION. Section 21. Purchase money resulting trust.** (1) Where a transfer of property is made to one

1 person and the purchase price is paid by another, a  
2 resulting trust arises in favor of the person who paid the  
3 purchase price.

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

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

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

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

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

20 NEW SECTION. Section 22. Constructive trust. A  
21 constructive trust arises when a person holding title to  
22 property is subject to an equitable duty to convey it to  
23 another on the ground that the person holding title would be  
24 unjustly enriched if he were permitted to retain it.

25 NEW SECTION. Section 23. Resulting trusts,

1 constructive trusts -- statute of frauds. Resulting trusts  
2 and constructive trusts are considered to arise by operation  
3 of law and are valid under [section 16(3)].

4 NEW SECTION. Section 24. Restraint on transfer of  
5 income. Except as provided in [section 28], if the trust  
6 instrument provides that a beneficiary's interest is not  
7 subject to voluntary or involuntary transfer, the  
8 beneficiary's interest in income under the trust may not be  
9 transferred and is not subject to enforcement of a money  
10 judgment until paid to the beneficiary.

11 NEW SECTION. Section 25. Restraint on transfer of  
12 principal. (1) Except as provided in subsection (2) and in  
13 [section 28], if the trust instrument provides that a  
14 beneficiary's interest in principal is not subject to  
15 voluntary or involuntary transfer, the beneficiary's  
16 interest in principal may not be transferred and is not  
17 subject to enforcement of a money judgment until paid to the  
18 beneficiary.

19 (2) After an amount of principal has become due and  
20 payable to the beneficiary under the trust instrument, upon  
21 petition to the court by a judgment creditor, the court may  
22 make an order directing the trustee to satisfy the money  
23 judgment out of that principal amount. The court in its  
24 discretion may issue an order directing the trustee to  
25 satisfy all or part of the judgment out of that principal

1 amount.

2 NEW SECTION. Section 26. Trust for support. Except as  
3 provided in [section 28], if the trust instrument provides  
4 that the trustee shall pay income or principal or both for  
5 the education or support of a beneficiary, the beneficiary's  
6 interest in income or principal or both under the trust may  
7 not be transferred and is not subject to the enforcement of  
8 a money judgment until paid to the beneficiary.

9 NEW SECTION. Section 27. Transferee or creditor  
10 cannot compel trustee to exercise discretion -- liability of  
11 trustee for payment to or for beneficiary. (1) If the trust  
12 instrument provides that the trustee shall pay to or for the  
13 benefit of a beneficiary so much of the income or principal  
14 or both as the trustee in the trustee's discretion sees fit  
15 to pay, a transferee or creditor of the beneficiary may not  
16 compel the trustee to pay any amount that may be paid only  
17 in the exercise of the trustee's discretion.

18 (2) If the trustee has knowledge of the transfer of  
19 the beneficiary's interest or has been served with process  
20 by a judgment creditor seeking to reach the beneficiary's  
21 interest, and the trustee pays to or for the benefit of the  
22 beneficiary any part of the income or principal that may be  
23 paid only in the exercise of the trustee's discretion, the  
24 trustee is liable to the transferee or creditor to the  
25 extent that the payment to or for the benefit of the

1 beneficiary impairs the right of the transferee or creditor.  
2 This subsection does not apply if the beneficiary's interest  
3 in the trust is subject to a restraint on transfer that is  
4 valid under [section 24 or 25].

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

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

12 NEW SECTION. Section 28. where trustor is  
13 beneficiary. (1) If the trustor is a beneficiary of a trust  
14 created by the trustor and the trustor's interest is subject  
15 to a provision restraining the voluntary or involuntary  
16 transfer of the trustor's interest, the restraint is invalid  
17 against transferees or creditors of the trustor. The  
18 invalidity of the restraint on transfer does not affect the  
19 validity of the trust.

20 (2) If the trustor is the beneficiary of a trust  
21 created by the trustor and the trust instrument provides  
22 that the trustee shall pay income or principal or both for  
23 the education or support of the beneficiary or gives the  
24 trustee the discretion to determine the amount of income or  
25 principal or both to be paid to or for the benefit of the



1 trustor, a transferee or creditor of the trustor may reach  
2 the maximum amount that the trustee could pay to or for the  
3 benefit of the trustor under the trust instrument, not  
4 exceeding the amount of the trustor's proportionate  
5 contribution to the trust.

6 NEW SECTION. Section 29. Disclaimer not a transfer.  
7 A disclaimer or renunciation by a beneficiary of all or part  
8 of his interest under a trust shall not be considered a  
9 transfer under [section 24 or 25].

10 NEW SECTION. Section 30. Presumption of revocability.  
11 Unless a trust is expressly made irrevocable by the trust  
12 instrument, the trust is revocable by the trustor. This  
13 section applies only where the trustor is domiciled in this  
14 state when the trust is created, where the trust instrument  
15 is executed in this state, or where the trust instrument  
16 provides that the law of this state governs the trust.

17 NEW SECTION. Section 31. Method of revocation by  
18 trustor. (1) A trust that is revocable by the trustor may be  
19 revoked in whole or in part by any of the following methods:  
20 (a) by compliance with any method of revocation  
21 provided in the trust instrument; or  
22 (b) by a writing (other than a will) signed by the  
23 trustor and delivered to the trustee during the lifetime of  
24 the trustor. If the trust instrument explicitly makes the  
25 method of revocation provided in the trust instrument the

1 exclusive method of revocation, the trust may not be revoked  
2 pursuant to this subsection.

3 (2) A trust may not be revoked by an attorney-in-fact  
4 under a power of attorney unless it is expressly permitted  
5 by the trust instrument.

6 (3) Nothing in this section limits the authority to  
7 modify or terminate a trust pursuant to [section 33 or 34]  
8 in an appropriate case.

9 (4) The manner of revocation of a trust revocable by  
10 the trustor that was created by an instrument executed  
11 before October 1, 1989, is governed by prior law and not by  
12 this section.

13 NEW SECTION. Section 32. Power to revoke includes  
14 power to modify. Unless the trust instrument provides  
15 otherwise, if a trust is revocable by the trustor, the  
16 trustor may modify the trust by the procedure for  
17 revocation.

18 NEW SECTION. Section 33. Modification or termination  
19 of irrevocable trust by all beneficiaries. (1) Except as  
20 provided in subsection (2), if all beneficiaries of an  
21 irrevocable trust consent, they may compel modification or  
22 termination of the trust upon petition to the court.

23 (2) If the continuance of the trust is necessary to  
24 carry out a material purpose of the trust, the trust cannot  
25 be modified or terminated unless the court, in its

discretion, determines that the reason for doing so under the circumstances outweighs the interest in accomplishing a material purpose of the trust. Under this section the court does not have discretion to permit termination of a trust that is subject to a valid restraint on transfer of the beneficiary's interest as provided in [sections 24 through 29].

**NEW SECTION. Section 34. Modification or termination by trustor and all beneficiaries.** (1) If the trustor and all beneficiaries of a trust consent, they may compel the modification or termination of the trust.

(2) If any beneficiary does not consent to the modification or termination of the trust, upon petition to the court, the other beneficiaries, with the consent of the trustor, may compel a modification or a partial termination of the trust if the interests of the beneficiaries who do not consent are not substantially impaired.

(3) If the trust provides for the disposition of principal to a class of persons described only as "heirs" or "next of kin" of the trustor, or using other words that describe the class of all persons who would take under the rules of intestacy, the court may limit the class of beneficiaries whose consent is needed to compel the modification or termination of the trust to the beneficiaries who are reasonably likely to take under the

circumstances.

**NEW SECTION. Section 35. Guardian ad litem.** For the purposes of [sections 33 and 34], the consent of a beneficiary who is legally incapacitated, unascertained, or unborn may be given in proceedings before the court by a guardian ad litem, if it would be appropriate to do so. In this case the guardian ad litem may rely on general family benefit accruing to living members of the beneficiary's family as a basis for approving a modification or termination of the trust.

**NEW SECTION. Section 36. No conclusive presumption of fertility.** In determining the class of beneficiaries whose consent is necessary to modify or terminate a trust pursuant to [section 33 or 34], the presumption of fertility is rebuttable.

**NEW SECTION. Section 37. Termination of trusts -- trustee's powers on termination.** (1) A trust terminates when any of the following occurs:

- (a) the term of the trust expires;
- (b) the trust purpose is fulfilled;
- (c) the trust purpose becomes unlawful;
- (d) the trust purpose becomes impossible to fulfill;

or

- (e) the trust is revoked.

(2) On termination of the trust, the trustee continues

1 to have the powers reasonably necessary under the  
2 circumstances to wind up the affairs of the trust.

3 **NEW SECTION. Section 38. Trust with uneconomically**  
4 **low principal.** (1) On petition by a trustee or beneficiary,  
5 if the court determines that the fair market value of the  
6 principal of a trust has become so low in relation to the  
7 cost of administration that continuation of the trust under  
8 its existing terms will defeat or substantially impair the  
9 accomplishment of its purposes, the court may, in its  
10 discretion and in a manner that conforms as nearly as  
11 possible to the intention of the trustor, order any of the  
12 following:

- 13 (a) termination of the trust;
- 14 (b) modification of the trust; or
- 15 (c) appointment of a new trustee.

16 (2) Notwithstanding subsection (1), if the trust  
17 principal does not exceed \$20,000 in value, the trustee has  
18 the power to terminate the trust.

19 (3) The existence of a trust provision restraining  
20 transfer of the beneficiary's interest does not prevent  
21 application of this section.

22 **NEW SECTION. Section 39. Modification or termination.**  
23 (1) On petition by a trustee or beneficiary, the court may  
24 modify the administrative or dispositive provisions of the  
25 trust or terminate the trust if the continuation of the

1 trust under its terms would defeat or substantially impair  
2 the accomplishment of the purposes of the trust, whether by  
3 the imposition of tax, the allocation of beneficial interest  
4 inconsistent with such purposes, or by other reason. In this  
5 case, if necessary to carry out the purposes of the trust,  
6 the court may order the trustee to do acts that are not  
7 authorized or are forbidden by the trust instrument.

8 (2) The court shall consider a trust provision  
9 restraining transfer of the beneficiary's interest as a  
10 factor in making its decision whether to modify or terminate  
11 the trust, but the court is not precluded from exercising  
12 its discretion to modify or terminate the trust solely  
13 because of a restraint on transfer.

14 **NEW SECTION. Section 40. Disposition of property upon**  
15 **termination.** At the termination of a trust, the trust  
16 property shall be disposed of as follows:

17 (1) In the case of a trust that is revoked by the  
18 trustor, as directed by the trustor.

19 (2) In the case of a trust that is terminated by the  
20 consent of the trustor and all beneficiaries, as agreed by  
21 the trustor and all beneficiaries.

22 (3) In any other case, as provided in the trust  
23 instrument or in a manner directed by the court that  
24 conforms as nearly as possible to the intention of the  
25 trustor as expressed in the trust instrument. If a trust is

terminated by the trustee pursuant to [section 38(2)], the trust property shall be distributed as determined by the trustee pursuant to this subsection.

**NEW SECTION. Section 41. Combination of similar trusts.** If the terms of two or more trusts are substantially similar, on petition by a trustee or beneficiary, the court, for good cause shown, may combine the trusts if the court determines that administration as a single trust will not defeat or substantially impair the accomplishment of the trust purposes or the interests of the beneficiaries.

**NEW SECTION. Section 42. Division of trusts.** On petition by a trustee or beneficiary, the court, for good cause shown, may divide a trust into two or more separate trusts, if the court determines that dividing the trust will not defeat or substantially impair the accomplishment of the trust purposes or the interests of the beneficiaries.

**NEW SECTION. Section 43. Charitable trust.** A charitable trust, or the charitable portion of a trust, subjects the trustee to equitable duties to deal with the trust property for a charitable purpose.

**NEW SECTION. Section 44. Charitable purposes.** Charitable purposes include:

- (1) the relief of poverty;
- (2) the advancement of education;
- (3) the advancement of religion;

(4) the promotion of health;

(5) governmental or municipal purposes; or

(6) other purposes the accomplishment of which are beneficial to the community.

**NEW SECTION. Section 45. Enforcement of a charitable trust.** The attorney general, a cotrustee, or a person who has a special interest in the enforcement of the charitable trust can maintain a suit for the enforcement of a charitable trust, but not persons who have no special interest or the trustor or his heirs or personal representative.

**NEW SECTION. Section 46. Cy pres doctrine.** If property is given in trust to be applied to a particular charitable purpose, and it is or becomes impossible, impracticable, or illegal to carry out the particular purpose, and if the trustor manifested a general intention to devote the property to charitable purposes, the trust need not fail. The court may direct the application of the property to some charitable purpose which falls within the general charitable intention of the trustor.

**NEW SECTION. Section 47. Acceptance of trust by trustee.** (1) The person named as trustee may accept the trust, or a modification of the trust, by one of the following methods:

- (a) signing the trust instrument or the trust

1 instrument as modified, or signing a separate written  
2 acceptance; or

3 (b) knowingly exercising powers or performing duties  
4 under the trust instrument or the trust instrument as  
5 modified, except as provided in subsection (2).

6 (2) In a case where there is an immediate risk of  
7 damage to the trust property, the person named as trustee  
8 may act to preserve the trust property without accepting the  
9 trust or a modification of the trust, if within reasonable  
10 time after acting the person delivers a written rejection of  
11 the trust or the modification of the trust to the trustor  
12 or, if the trustor is dead or incompetent, to a beneficiary.  
13 This subsection does not impose a duty on the person named  
14 as trustee to act.

15 NEW SECTION. Section 48. Rejection of trust --  
16 nonliability of person who rejects trust. (1) A person named  
17 as trustee may in writing reject the trust or a modification  
18 of the trust.

19 (2) If the person named as trustee does not accept the  
20 trust or a modification of the trust by a method provided in  
21 [section 47(1)] within a reasonable time after learning of  
22 being named as trustee or of the modification, the person  
23 has rejected the trust or the modification.

24 (3) A person named as trustee who rejects the trust or  
25 a modification of the trust is not liable with respect to

1 the rejected trust or modification.

2 NEW SECTION. Section 49. Trustee's bond. (1) A  
3 trustee is not required to give a bond to secure performance  
4 of the trustee's duties, unless either of the following  
5 circumstances occur:

6 (a) A bond is required by the trust instrument.

7 (b) Notwithstanding a waiver of bond in the trust  
8 instrument, a bond is found by the court to be necessary to  
9 protect the interests of beneficiaries.

10 (2) Notwithstanding subsection (1)(a), the court may  
11 excuse a requirement of a bond, reduce or increase the  
12 amount of a bond, release a surety, permit the substitution  
13 of another bond with the same or different sureties, or  
14 accept another form of security.

15 (3) If a bond is required, it shall be filed or  
16 served, in the amount, and with sureties and liabilities as  
17 provided in the trust instrument or as ordered by the court.

18 (4) Except as otherwise provided in the trust  
19 instrument or ordered by the court, the cost of the bond  
20 shall be charged against the trust.

21 (5) A trust company may not be required to give a  
22 bond, notwithstanding a contrary provision in the trust  
23 instrument.

24 NEW SECTION. Section 50. Certificate of trustee. On  
25 application by the trustee, the clerk of the district court

shall issue a certificate that the trustee is a duly appointed and acting trustee under the trust if the court file shows the incumbency of the trustee.

**NEW SECTION. Section 51. Cotrustees.** (1) Unless otherwise provided in the trust instrument, a power vested in two trustees may only be exercised by their unanimous action.

(2) Unless otherwise provided in the trust instrument, a power vested in three or more trustees may be exercised by a majority of such trustees.

**NEW SECTION. Section 52. Vacancy in office of cotrustee.** Unless otherwise provided in the trust instrument, if a vacancy occurs in the office of a cotrustee, the remaining cotrustee or cotrustees may act for the trust as if they are the only trustees.

**NEW SECTION. Section 53. Temporary incapacity of cotrustee.** Unless otherwise provided in the trust instrument, if a cotrustee is unavailable to perform the duties of the cotrustee because of absence, illness, or other temporary incapacity, the remaining cotrustee or cotrustees may act for the trust when necessary to accomplish the purposes of the trust or to avoid irreparable injury to the trust property as if they are the only trustees.

**NEW SECTION. Section 54. Resignation of the trustee.**

(1) A trustee who has accepted the trust may resign only by one of the following methods:

(a) as provided in the trust instrument;

(b) in the case of a revocable trust, with the consent of the person holding the power to revoke the trust;

(c) in the case of a trust that is not revocable, with the consent of only all of the adult beneficiaries who are receiving or are entitled to receive income under the trust or to receive a distribution of principal if the trust were terminated at the time consent is sought; or

(d) pursuant to a court order obtained as provided in subsection (2).

(2) On petition by the trustee, the court shall accept the trustee's resignation. The court may also make any orders necessary for the preservation of the trust property, including the appointment of a receiver or a temporary trustee.

**NEW SECTION. Section 55. Liability upon resignation.**

The liability for acts or omissions of a resigning trustee or of the sureties on the trustee's bond, if any, is not released or affected in any manner by the trustee's resignation.

**NEW SECTION. Section 56. Removal of a trustee.** (1) A

trustee may be removed in accordance with the trust instrument or by the court on its own motion or on petition

1 of a cotrustee or beneficiary.

2 (2) The grounds for removal of a trustee by the court  
3 include the following:

4 (a) if the trustee has committed a breach of the  
5 trust;

6 (b) if the trustee is insolvent or otherwise unfit to  
7 administer the trust;

8 (c) if hostility or lack of cooperation among  
9 cotrustees impairs the administration of the trust;

10 (d) if the trustee fails or declines to act; or

11 (e) for other good cause.

12 (3) If it appears to the court that trust property or  
13 the interests of a beneficiary may suffer loss or injury  
14 pending a decision on a petition for removal of a trustee  
15 and any appellate review, the court may, on its own motion  
16 or on petition of a cotrustee or beneficiary, compel the  
17 trustee whose removal is sought to surrender trust property  
18 to a cotrustee or to a receiver or temporary trustee. The  
19 court may also suspend the powers of the trustee to the  
20 extent the court considers necessary.

21 NEW SECTION. Section 57. Vacancy in office of  
22 trustee. There is a vacancy in the office of trustee in any  
23 of the following circumstances:

24 (1) The person named as trustee rejects the trust.

25 (2) The person named as trustee cannot be identified

1 or does not exist.

2 (3) The trustee resigns or is removed.

3 (4) The trustee dies.

4 (5) A conservator or guardian of an individual trustee  
5 is appointed.

6 (6) A certificate of incorporation of a trust company  
7 is revoked or its powers are suspended, if the revocation or  
8 suspension is to be in effect for a period of 30 days or  
9 more.

10 (7) A receiver is appointed for a trust company if the  
11 appointment is not vacated within a period of 30 days.

12 NEW SECTION. Section 58. Delivery of property by  
13 former trustee upon occurrence of vacancy. When a vacancy  
14 has occurred in the office of trustee, the former trustee  
15 who holds property of the trust shall deliver the trust  
16 property to the successor trustee or a person appointed by  
17 the court to receive the property and remains responsible  
18 for the trust property until it is delivered. A trustee who  
19 has resigned or is removed has the powers reasonably  
20 necessary under the circumstances to preserve the trust  
21 property until it is delivered to the successor trustee and  
22 to perform actions necessary to complete the resigning or  
23 removed trustee's administration of the trust.

24 NEW SECTION. Section 59. Appointment of trustee to  
25 fill vacancy. (1) If the trust has no trustee or if the

1 trust instrument requires a vacancy in the office of a  
2 cotrustee to be filled, the vacancy shall be filled as  
3 provided in this section.

4 (2) If the trust instrument provides a practical  
5 method of appointing a trustee or names the person to fill  
6 the vacancy, the vacancy shall be filled as provided in the  
7 trust instrument.

8 (3) If the vacancy in the office of trustee is not  
9 filled as provided in subsection (2), on petition of a  
10 cotrustee or beneficiary the court may, in its discretion,  
11 appoint a trustee to fill the vacancy. If the trust provides  
12 for more than one trustee, the court may, in its discretion,  
13 appoint the original number or any lesser number of  
14 trustees. In selecting a trustee, the court shall give  
15 consideration to the wishes of the beneficiaries who are 14  
16 years of age or older.

17 NEW SECTION. Section 60. Capacity of trustee. (1) The  
18 trustee must have the legal capacity to take, hold, and  
19 transfer the trust property. The trustee may be a natural  
20 person or a corporation or trust company. If the trustee is  
21 a corporation, it must be qualified to act as a trustee in  
22 this state.

23 (2) A beneficiary of a trust may be the trustee of the  
24 trust.

25 (3) The trustor of a trust may be the trustee of the

1 trust.

2 NEW SECTION. Section 61. Trustee's compensation as  
3 provided in trust instrument -- different compensation. (1)  
4 Subject to subsection (2), if the trust instrument provides  
5 for the trustee's compensation, the trustee is entitled to  
6 be compensated in accordance with the trust instrument.

7 (2) Upon proper showing, the court may fix or allow  
8 greater or lesser compensation than could be allowed under  
9 the terms of the trust in any of the following  
10 circumstances:

11 (a) whenever the duties of the trustee are  
12 substantially different from those contemplated when the  
13 trust was created;

14 (b) whenever the compensation in accordance with the  
15 terms of the trust would be inequitable or unreasonably low  
16 or high; or

17 (c) in extraordinary circumstances calling for  
18 equitable relief.

19 (3) An order fixing or allowing greater or lesser  
20 compensation under subsection (2) applies only prospectively  
21 to actions taken in administration of the trust after the  
22 order is made.

23 NEW SECTION. Section 62. Trustee's compensation where  
24 trust silent. If the trust instrument does not specify the  
25 trustee's compensation, the trustee is entitled to



1 reasonable compensation.

2 NEW SECTION. Section 63. Compensation for services  
3 rendered in making temporary investments. In addition to  
4 other compensation to which the trustee is entitled, the  
5 trustee is entitled to make a reasonable charge for services  
6 rendered in making temporary investments.

7 NEW SECTION. Section 64. Court determination of  
8 prospective compensation. The court may fix an amount of  
9 periodic compensation under [sections 61 and 62] to continue  
10 for as long as the court determines is proper.

11 NEW SECTION. Section 65. Compensation of cotrustees.  
12 Unless the trust instrument otherwise provides or the  
13 trustees otherwise agree, if the trust has two or more  
14 trustees, the compensation shall be apportioned among the  
15 cotrustees according to the services rendered by them.

16 NEW SECTION. Section 66. Repayment of trustee for  
17 expenditures. A trustee is entitled to the repayment out of  
18 the trust property for the following:

19 (1) expenditures that were properly incurred in the  
20 administration of the trust; and

21 (2) to the extent that they benefited the trust,  
22 expenditures that were not properly incurred in the  
23 administration of the trust.

24 NEW SECTION. Section 67. Trustee's lien. The trustee  
25 has an equitable lien on the trust property as against the

1 beneficiary in the amount of advances, with any interest,  
2 made for the protection of the trust, and for expenses,  
3 losses, and liabilities sustained in the administration of  
4 the trust or because of ownership or control of any trust  
5 property.

6 NEW SECTION. Section 68. Limits on rights of  
7 beneficiary of revocable trust. Except to the extent that  
8 the trust instrument otherwise provides or where the joint  
9 action of the trustor and all beneficiaries is required,  
10 during the time that a trust is revocable and the person  
11 holding the power to revoke the trust is competent:

12 (1) The person holding the power to revoke, and not  
13 the beneficiary, has the rights afforded beneficiaries under  
14 [sections 1 through 215].

15 (2) The duties of the trustee are owed to the person  
16 holding the power to revoke.

17 NEW SECTION. Section 69. Consent by beneficiary of  
18 revocable trust. (1) In any case where the consent of a  
19 beneficiary may be given or is required to be given before  
20 an action may be taken, during the time that a trust is  
21 revocable and the person holding the power to revoke the  
22 trust is competent, the person holding the power to revoke,  
23 and not the beneficiary, has the power to consent or  
24 withhold consent.

25 (2) This section does not apply where the joint

1 consent of the trustor and all beneficiaries is required by  
2 statute.

3 **NEW SECTION. Section 70.** Notice to beneficiary of  
4 revocable trust. Notwithstanding any other statute, during  
5 the time that a trust is revocable and the person holding  
6 the power to revoke the trust is competent, a notice that is  
7 to be given to a beneficiary shall be given to the person  
8 holding the power to revoke and not to the beneficiary.

9 **NEW SECTION. Section 71.** Rights of holder of power of  
10 appointment or withdrawal. The holder of a presently  
11 exercisable general power of appointment or power to  
12 withdraw property from the trust has the rights of a trustor  
13 provided by [sections 68 through 70], inclusive, to the  
14 extent of the holder's power over the trust property.

15 **NEW SECTION. Section 72.** Notice in case involving  
16 future interest of beneficiary. (1) Subject to subsections  
17 (2) and (3), it is sufficient compliance with a requirement  
18 in [sections 1 through 215] that notice be given to a  
19 beneficiary, or to a person interested in the trust, if  
20 notice is given as follows:

21 (a) Whenever an interest has been limited on any  
22 future contingency to persons who will compose a certain  
23 class upon the happening of a certain event without further  
24 limitation, notice shall be given to the persons in being  
25 who would constitute the class if the event had happened

1 immediately before the commencement of the proceedings.

2 (b) Whenever an interest has been limited to a living  
3 person and the same interest, or a share therein, has been  
4 further limited upon the happening of a future event to the  
5 surviving spouse or to persons who are or may be the  
6 distributees, heirs, issue, or other kindred of the living  
7 persons, notice shall be given to the living person.

8 (c) Whenever an interest has been limited upon the  
9 happening of any future event to a person, or a class of  
10 persons, or both, and the interest, or a share of the  
11 interest, has been further limited upon the happening of an  
12 additional future event to another person, or a class of  
13 persons, or both, notice shall be given to the person or  
14 persons in being who would take the interest upon the  
15 happening of the first of these events.

16 (2) If a conflict of interest involving the subject  
17 matter of the trust proceeding exists between a person to  
18 whom notice is required to be given and a person to whom  
19 notice is not otherwise required to be given under  
20 subsection (1), notice shall also be given to persons not  
21 otherwise entitled to notice under subsection (1) with  
22 respect to whom the conflict of interest exists.

23 (3) Nothing in this section affects any of the  
24 following:

25 (a) requirements for notice to:

- (i) a person who has requested special notice;
- (ii) a person who has filed notice of appearance; or
- (iii) a particular person or entity required by statute to be given notice.

(b) Availability of a guardian ad litem pursuant to [section 187].

**NEW SECTION. Section 73. Duty to administer trust.** On acceptance of the trust, the trustee has a duty to administer the trust according to the trust instrument and, except to the extent the trust instrument provides otherwise, according to [sections 1 through 215].

**NEW SECTION. Section 74. Duties of trustee of revocable trust.** (1) Except as provided in subsection (2), the trustee of a revocable trust shall follow any written direction acceptable to the trustee given from time to time:

(a) by the person then having the power to revoke the trust or the part thereof with respect to which the direction is given; or

(b) by the person to whom the trustor delegates the right to direct the trustee.

(2) If a written direction given under subsection (1) would have the effect of modifying the trust, the trustee has no duty to follow the direction unless it complies with the requirements for modifying the trust.

**NEW SECTION. Section 75. Duty of loyalty.** (1) The

trustee has a duty to administer the trust solely in the interest of the beneficiaries.

(2) It is not a violation of the duty provided in subsection (1) for a trustee who administers two trusts to sell, exchange, or participate in the sale or exchange of trust property between the trusts, if both of the following requirements are met:

(a) the sale or exchange is fair and reasonable with respect to the beneficiaries of both trusts; and

(b) the trustee gives to the beneficiaries of both trusts notice of all material facts related to the sale or exchange that the trustee knows or should know.

**NEW SECTION. Section 76. Duty to deal impartially with beneficiaries.** If a trust has two or more beneficiaries, the trustee has a duty to deal impartially with them.

**NEW SECTION. Section 77. Duty to avoid conflict of interest.** (1) The trustee has a duty not to use or deal with trust property for the trustee's own profit or for any other purpose unconnected with the trust, nor to take part in any transaction in which the trustee has an interest adverse to the beneficiary.

(2) The trustee may not enforce any claim against the trust property that the trustee purchased after or in contemplation of appointment as trustee, but the court may

1 allow the trustee to be reimbursed from trust property the  
2 amount that the trustee paid for the claim.

3 (3) A transaction between the trustee and a  
4 beneficiary which occurs during the existence of the trust  
5 or while the trustee's influence with the beneficiary  
6 remains and by which the trustee obtains an advantage from  
7 the beneficiary is presumed to be a violation of the  
8 trustee's fiduciary duties. This presumption is a  
9 presumption affecting the burden of proof. This subsection  
10 does not apply to the provisions of an agreement between a  
11 trustee and a beneficiary relating to the hiring or  
12 compensation of the trustee.

13 NEW SECTION. Section 78. Duty not to undertake  
14 adverse trust. The trustee of one trust has a duty not to  
15 knowingly become a trustee of another trust adverse in its  
16 nature to the interest of the beneficiary of the first  
17 trust, and a duty to eliminate the conflict or resign as  
18 trustee when the conflict is discovered.

19 NEW SECTION. Section 79. Duty to take control of and  
20 preserve trust property. The trustee has a duty to take  
21 reasonable steps under the circumstances to take and keep  
22 control of and to preserve the trust property.

23 NEW SECTION. Section 80. Duty to make trust property  
24 productive. The trustee has a duty to make the trust  
25 property productive under the circumstances and in

1 furtherance of the purposes of the trust.

2 NEW SECTION. Section 81. Duty to dispose of improper  
3 investments. (1) Except as provided in subsection (2), the  
4 trustee has a duty within a reasonable time to dispose of  
5 any part of the trust property included in the trust at the  
6 time of its creation, or later acquired by or added to the  
7 trust, that would not be a proper investment for the trustee  
8 to make.

9 (2) Unless the trust instrument expressly provides  
10 otherwise, the trustee may, without liability, continue to  
11 hold property included in the trust at its creation or later  
12 added to the trust or acquired pursuant to proper authority,  
13 if retention is in the best interests of the trust or in  
14 furtherance of the purposes of the trust.

15 NEW SECTION. Section 82. Duty to keep trust property  
16 separate and identified. The trustee has a duty to do the  
17 following:

18 (1) to keep the trust property separate from other  
19 property not subject to the trust; and

20 (2) to see that the trust property is designated as  
21 property of the trust.

22 NEW SECTION. Section 83. Duty to enforce claims. The  
23 trustee has a duty to take reasonable steps to enforce  
24 claims that are part of the trust property.

25 NEW SECTION. Section 84. Duty to defend actions. The

1 trustee has a duty to take reasonable steps to defend  
2 actions that may result in a loss to the trust.

3 NEW SECTION. Section 85. Duty not to delegate. (1)  
4 The trustee has a duty not to delegate to others the  
5 performance of acts that the trustee can reasonably be  
6 required personally to perform and may not transfer the  
7 office of trustee to another person nor delegate the entire  
8 administration of the trust to a cotrustee or other person.

9 (2) In a case where a trustee has properly delegated a  
10 matter to an agent, cotrustee, or other person, the trustee  
11 has a duty to exercise general supervision over the person  
12 performing the delegated matter.

13 NEW SECTION. Section 86. Duty with respect to  
14 cotrustees. If a trust has more than one trustee, each  
15 trustee has a duty to do the following:

16 (1) to participate in the administration of the trust;  
17 and

18 (2) to take reasonable steps to prevent a cotrustee  
19 from committing a breach of trust or to compel a cotrustee  
20 to redress a breach of trust.

21 NEW SECTION. Section 87. Duty to use special skills.  
22 (1) The trustee has a duty to apply the full extent of the  
23 trustee's skills.

24 (2) If the trustor, in selecting the trustee, has  
25 relied on the trustee's representation of having special

1 skills, the trustee is held to the standard of the skills  
2 represented.

3 NEW SECTION. Section 88. Certain actions not  
4 violations of duties. The provision of services for  
5 compensation by a regulated financial institution or its  
6 affiliates in the ordinary course of business either to a  
7 trust of which it also acts as trustee or to a person  
8 dealing with the trust is not a violation of the duty  
9 provided in [section 75 or 77]. For the purposes of this  
10 section, "affiliate" means a corporation that directly or  
11 indirectly through one or more intermediaries controls, is  
12 controlled by, or is under common control with another  
13 domestic or foreign corporation.

14 NEW SECTION. Section 89. Duty to use ordinary skill  
15 and prudence. (1) The trustee shall administer the trust  
16 with the care, skill, prudence, and diligence under the  
17 circumstances then prevailing that a prudent person would  
18 use to accomplish the purposes of the trust as determined  
19 from the trust instrument.

20 (2) When investing, reinvesting, purchasing,  
21 acquiring, exchanging, selling, and managing trust property,  
22 the trustee shall act with the care, skill, prudence, and  
23 diligence under the circumstances then prevailing, including  
24 but not limited to the general economic conditions and the  
25 anticipated needs of the trust and its beneficiaries, that a

1 prudent person would use to accomplish the purposes of the  
2 trust as determined from the trust instrument. In the course  
3 of administering the trust pursuant to this standard,  
4 individual investments shall be considered as part of an  
5 overall investment strategy.

6 (3) The trustor may expand or restrict the standards  
7 provided in subsections (1) and (2) by express provisions in  
8 the trust instrument. A trustee is not liable to a  
9 beneficiary for the trustee's reliance on these express  
10 provisions.

11 NEW SECTION. Section 90. Standard of care not  
12 affected by compensation. A trustee's standard of care and  
13 performance in administering the trust is not affected by  
14 whether or not the trustee receives any compensation.

15 NEW SECTION. Section 91. Interpretation of trust  
16 terms concerning legal investments. If a trust created  
17 before, on, or after October 1, 1989, refers to "investments  
18 permissible by law for investment of trust funds",  
19 "authorized by law for investment of trust funds", "legal  
20 investments", "authorized investments", or "investments  
21 acquired using the judgment and care which men of prudence,  
22 discretion, and intelligence exercise in the management of  
23 their own affairs, not in regard to speculation, but in  
24 regard to the permanent disposition of their funds,  
25 considering the probable income, as well as the probable

1 safety of their capital", or uses other words of similar  
2 meaning in defining the powers of the trustee relative to  
3 investments, such language, in the absence of other  
4 controlling or modifying provisions of the trust instrument,  
5 shall be construed as imposing the standard of care provided  
6 by [section 89] and authorizing any investment permitted  
7 under [sections 105 through 137].

8 NEW SECTION. Section 92. Trustee's general duty to  
9 report information to beneficiaries. The trustee has a duty  
10 to keep the beneficiaries of the trust reasonably informed  
11 of the trust and its administration.

12 NEW SECTION. Section 93. Duty to report information  
13 about trust on request. Except as provided in [section 95],  
14 on reasonable request by a beneficiary, the trustee shall  
15 provide the beneficiary with a report of information about  
16 the assets, liabilities, receipts, and disbursements of the  
17 trust, the acts of the trustee, and the particulars relating  
18 to the administration of the trust relevant to the  
19 beneficiary's interest, including the terms of the trust  
20 that describe or affect the beneficiary's interest.

21 NEW SECTION. Section 94. Duty to provide annual  
22 statement to income beneficiaries. Except as provided in  
23 [section 95], the trustee shall annually mail each income  
24 beneficiary an itemized statement of all current receipts  
25 and disbursements of both principal and income.

**NEW SECTION. Section 95. Exceptions to duty to report information and to provide annual statement.** The trustee is not required to report information or to provide an annual statement to a beneficiary in any of the following circumstances:

(1) to the extent the trust instrument waives the report or annual statement;

(2) in the case of a beneficiary of a revocable trust, as provided in [section 68].

(3) as to a beneficiary who has waived in writing the right to a report or annual statement. A waiver of rights under this subsection may be withdrawn in writing at any time as to the most recent annual statement or future annual statements. A waiver has no effect of the beneficiary's right to petition for a report, statement, or account pursuant to [section 179]; or

(4) if the beneficiary and the trustee are the same person.

**NEW SECTION. Section 96. Permissive accounts.** At any time during the term of the trust or upon the termination of the trust, the trustee may mail an account to trust beneficiaries. To effectively bar a beneficiary from an action against the trustee pursuant to [section 159], the account must contain the following information:

(1) a statement of receipts and disbursements of

principal and income that have occurred since the last account;

(2) a statement of the assets and liabilities of the trust since the last account;

(3) the trustee's compensation since the last account;

(4) the agents hired by the trustee, their relationship to the trustee, if any, and their compensation since the last account;

(5) a statement that the recipient of the account may petition the court pursuant to [section 179] to obtain a court review of the account and of the acts of the trustee; and

(6) a statement that claims against the trustee for breach of trust may not be made after the expiration of 3 years from the date the beneficiary receives an account disclosing facts giving rise to the claim.

**NEW SECTION. Section 97. Discretionary powers to be exercised reasonably.** Except as provided in [section 98], a discretionary power conferred upon a trustee is not left to the trustee's arbitrary discretion, but shall be exercised reasonably.

**NEW SECTION. Section 98. Standard for exercise of "absolute", "sole", or "uncontrolled" powers.** (1) Subject to the additional requirements of subsection (2), if a trust instrument confers "absolute", "sole", or "uncontrolled"

1 discretion on a trustee, the trustee shall act in accordance  
2 with fiduciary principles and may not act in disregard of  
3 the purposes of the trust.

4 (2) Notwithstanding the trustor's use of terms like  
5 "absolute", "sole", or "uncontrolled", a person who is a  
6 beneficiary of a trust and who, either individually or as  
7 trustee or cotrustee, holds a power to take or distribute  
8 income or principal to or for the benefit of himself or  
9 herself pursuant to a standard, shall exercise that power  
10 reasonably and in accordance with the standard. In any case  
11 in which the standard governing the exercise of the power  
12 does not clearly indicate that a broader power is intended,  
13 the holder of the power may exercise it in his or her favor  
14 only for his or her health, education, support, or  
15 maintenance.

16 NEW SECTION. Section 99. Definitions. As used in  
17 [sections 99 through 104], the following definitions apply:

18 (1) "Charitable trust" means a charitable trust as  
19 described in section 4947(a)(1) of the Internal Revenue  
20 Code.

21 (2) "Private foundation" means a private foundation as  
22 defined in section 509 of the Internal Revenue Code.

23 (3) "Split-interest trust" means a split-interest  
24 trust as described in section 4947(a)(2) of the Internal  
25 Revenue Code.

1 NEW SECTION. Section 100. Distribution under  
2 charitable trust or private foundation. During any period  
3 when a trust is considered to be a charitable trust or a  
4 private foundation, the trustee shall distribute its income  
5 for each taxable year (and principal if necessary) at a time  
6 and in a manner that will not subject the property of the  
7 trust to tax under section 4942 of the Internal Revenue  
8 Code.

9 NEW SECTION. Section 101. Restrictions on trustees  
10 under charitable trust, private foundations, or  
11 split-interest trust. During any period when a trust is  
12 considered to be a charitable trust, a private foundation,  
13 or a split-interest trust, the trustee may not do any of the  
14 following:

15 (1) engage in any act of self-dealing as defined in  
16 section 4941(d) of the Internal Revenue Code;

17 (2) retain any excess business holdings as defined in  
18 section 4943(c) of the Internal Revenue Code;

19 (3) make any investments in such manner as to subject  
20 the property of the trust to tax under section 4944 of the  
21 Internal Revenue Code; or

22 (4) make any taxable expenditure as defined in section  
23 4945(d) of the Internal Revenue Code.

24 NEW SECTION. Section 102. Exceptions applicable to  
25 split-interest trusts. With respect to split-interest



1 trusts:

2 (1) [Subsections (2) and (3) of section 101] do not  
3 apply to any trust described in section 4947(b)(3) of the  
4 Internal Revenue Code.

5 (2) [Section 101] does not apply with respect to any  
6 of the following:

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

11 (b) any amounts in trust other than amounts for which  
12 a deduction was allowed under section 170, 545(b)(2),  
13 556(b)(2), 642(c), 2055, 2106(a)(2), or 2522 of the Internal  
14 Revenue Code, if the amounts are segregated, as that term is  
15 defined in section 4947(a)(3) of the Internal Revenue Code,  
16 from amounts for which no deduction was allowable; or

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

19 **NEW SECTION. Section 103.** Incorporation in trust  
20 instruments. The provisions of [sections 100 through 102]  
21 shall be considered to be contained in the instrument  
22 creating every trust to which [sections 99 through 104]  
23 apply. Any provision of the instrument inconsistent with or  
24 contrary to [sections 99 through 104] is without effect.

25 **NEW SECTION. Section 104.** Proceedings. (1) A

1 proceeding contemplated by section 101(1)(3) of the federal  
2 Tax Reform Act of 1969 (Public Law 91-172) may be commenced  
3 pursuant to [section 179] by the organization involved. All  
4 specifically named beneficiaries of the organization and the  
5 attorney general shall be parties to the proceedings.  
6 Notwithstanding [section 165], this provision is not  
7 exclusive and does not limit any jurisdiction that otherwise  
8 exists.

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

15 **NEW SECTION. Section 105.** General powers of trustee.  
16 A trustee has the following powers without the need to  
17 obtain court authorization:

18 (1) the powers conferred by the trust instrument;

19 (2) except as limited in the trust instrument, the  
20 powers conferred by statute; and

21 (3) except as limited in the trust instrument, the  
22 power to perform any act that a trustee would perform for  
23 the purposes of the trust under the standard of care  
24 provided in [section 89].

25 **NEW SECTION. Section 106.** Power of court to relieve

1 trustee from restrictions on powers. [Sections 109 through  
2 137] do not affect the power of a court to relieve a trustee  
3 from restrictions on the exercise of powers under the trust  
4 instrument.

5 NEW SECTION. Section 107. Exercise of powers subject  
6 to trustee's duties. The grant of a power to a trustee,  
7 whether by the trust instrument, by statute, or by the  
8 court, does not in itself require or permit the exercise of  
9 the power. The exercise of a power by a trustee is subject  
10 to the trustee's fiduciary duties.

11 NEW SECTION. Section 108. Application of rules  
12 governing trustees' powers. An instrument that incorporates  
13 the powers provided in former Title 72, chapter 21,  
14 ("Montana Trustees' Powers Act") shall be considered to  
15 refer to the powers provided [sections 109 through 137]. For  
16 this purpose, the trustee's powers under former Title 72,  
17 chapter 21, ("Montana Trustees' Powers Act") are not  
18 diminished and the trustee is not required to obtain court  
19 approval for exercise of a power for which court approval  
20 was not required by former law.

21 NEW SECTION. Section 109. Collecting and holding  
22 property. The trustee has the power to collect, hold, and  
23 retain trust property received from a trustor or any other  
24 person until, in the judgment of the trustee, disposition of  
25 the property should be made. The property may be retained

1 even though it includes property in which the trustee is  
2 personally interested.

3 NEW SECTION. Section 110. Receiving additions to  
4 trust. The trustee has the power to accept additions to the  
5 property of the trust from a trustor or any other person.

6 NEW SECTION. Section 111. Participation in business  
7 -- change in form of business. The trustee has the power to  
8 continue to participate in the operation of any business or  
9 other enterprise that is part of the trust property and may  
10 effect incorporation, dissolution, or other change in the  
11 form of the organization of the business or enterprise.

12 NEW SECTION. Section 112. Investments. The trustee  
13 has the power to invest in any kind of property, whether  
14 real, personal, or mixed.

15 NEW SECTION. Section 113. Investments in obligations  
16 of United States government. In the absence of an express  
17 provision to the contrary in a trust instrument, whenever  
18 the instrument directs or permits investment in obligations  
19 of the United States government, the trustee has the power  
20 to invest in those obligations directly or in the form of an  
21 interest in a money market mutual fund registered under the  
22 Investment Company Act of 1940 (15 U.S.C. section 80a-1 et  
23 seq.) or an investment vehicle authorized for the collective  
24 investment of trust funds pursuant to section 9.18 of Title  
25 12 of the Code of Federal Regulations, the portfolios of

1 which are limited to United States government obligations  
2 and to repurchase agreements fully collateralized by United  
3 States government obligations.

4 NEW SECTION. Section 114. Deposits. (1) The trustee  
5 has the power to deposit trust funds at reasonable interest  
6 with any of the following:

- 7 (a) an insured commercial or savings bank;
- 8 (b) an insured building and loan association; or
- 9 (c) an insured credit union.

10 (2) A trustee may deposit trust funds as described in  
11 subsection (1) in a financial institution operated by, or  
12 that is an affiliate of, the trustee. For the purpose of  
13 this subsection, "affiliate" means a corporation that  
14 directly or indirectly through one or more intermediaries  
15 controls, is controlled by, or is under common control with  
16 another domestic or foreign corporation.

17 (3) This section does not limit the power of a trustee  
18 in a proper case to deposit trust funds in institutions as  
19 described in subsection (1) that are subject to notice or  
20 other conditions respecting withdrawal prescribed by law or  
21 governmental regulation.

22 (4) Nothing in this section prevents the trustee from  
23 holding an amount of trust property reasonably necessary for  
24 the orderly administration of the trust in the form of cash  
25 or in a checking account without interest.

1 NEW SECTION. Section 115. Acquisition and disposition  
2 of property. The trustee has the power to acquire or dispose  
3 of property, for cash or on credit, at public or private  
4 sale, or by exchange.

5 NEW SECTION. Section 116. Management of property. The  
6 trustee has the power to manage, control, divide, develop,  
7 improve, exchange, partition, change the character of, or  
8 abandon trust property or any interest therein.

9 NEW SECTION. Section 117. Encumbrances. The trustee  
10 has the power to encumber, mortgage, or pledge trust  
11 property for a term within or extending beyond the term of  
12 the trust in connection with the exercise of any power  
13 vested in the trustee.

14 NEW SECTION. Section 118. Repairs and alterations of  
15 property. The trustee has the power to do any of the  
16 following:

- 17 (1) make ordinary or extraordinary repairs,
- 18 alterations, improvements in buildings or other trust
- 19 property;
- 20 (2) demolish any improvements; or
- 21 (3) raze existing or erect new party walls or
- 22 buildings.

23 NEW SECTION. Section 119. Development of land. The  
24 trustee has the power to do any of the following:

- 25 (1) subdivide or develop land;

(2) dedicate land to public use;

(3) make or obtain the vacation of plats and adjust boundaries;

(4) adjust differences in valuation on exchange or partition by giving or receiving consideration; or

(5) dedicate easements to public use without consideration.

**NEW SECTION. Section 120.** Leases. The trustee has the power to enter into a lease for any purpose as lessor or lessee with or without the option to purchase or renew and for a term within or extending beyond the term of the trust.

**NEW SECTION. Section 121.** Mineral leases. The trustee has the power to enter into a lease or arrangement for exploration and removal of gas, oil, or other minerals, and to enter into a community oil lease or a pooling or utilization agreement, and for a term within or extending beyond the term of the trust.

**NEW SECTION. Section 122.** Options. The trustee has the power to grant an option involving disposition of trust property or to take an option for the acquisition of any property, and an option may be granted or taken that is exercisable beyond the term of the trust.

**NEW SECTION. Section 123.** Voting rights with respect to corporate shares, memberships, or property. With respect to any shares of stock of a domestic or foreign corporation,

any membership in a nonprofit corporation, or any other property, a trustee has the power to do any of the following:

(1) vote in person and give proxies to exercise any voting rights with respect to the shares, memberships, or property;

(2) waive notice of a meeting or give consent to the holding of a meeting; or

(3) authorize, ratify, approve, or confirm any action that could be taken by shareholders, members, or property owners.

**NEW SECTION. Section 124.** Payment of calls and assessments. The trustee has the power to pay calls, assessments, and any other sums chargeable or accruing against or on account of securities.

**NEW SECTION. Section 125.** Stock subscriptions and conversions. The trustee has the power to sell or exercise stock subscription or conversion rights.

**NEW SECTION. Section 126.** Consent to change in form of business -- voting trusts. The trustee has the power to consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise, and to participate in voting trusts, pooling arrangements, and foreclosures, and in connection therewith, to deposit

1 securities with and transfer title and delegate discretions  
2 to any protective or other committee as the trustee may  
3 consider advisable.

4 NEW SECTION. Section 127. Holding securities in name  
5 of nominee. The trustee has the power to hold a security in  
6 the name of a nominee or in other form without disclosure of  
7 the trust so that title to the security may pass by  
8 delivery, but the trustee is liable for any act of the  
9 nominee in connection with the security so held.

10 NEW SECTION. Section 128. Insurance. The trustee has  
11 the power to insure the property of the trust against damage  
12 or loss and to insure the trustee against liability with  
13 respect to third persons.

14 NEW SECTION. Section 129. Borrowing money. The  
15 trustee has the power to borrow money for any trust purpose  
16 to be repaid from trust property.

17 NEW SECTION. Section 130. Payment and settlement of  
18 claims. The trustee has the power to do any of the  
19 following:

- 20 (1) pay or contest any claim;
- 21 (2) settle a claim by or against the trust by
- 22 compromise, arbitration, or otherwise; or
- 23 (3) release, in whole or in part, any claim belonging
- 24 to the trust.

25 NEW SECTION. Section 131. Payment of taxes, trustee's

1 compensation, and other expenses. The trustee has the power  
2 to pay taxes, assessments, reasonable compensation of the  
3 trustee and of employees and agents of the trust, and other  
4 expenses incurred in the collection, care, administration,  
5 and protection of the trust.

6 NEW SECTION. Section 132. Loans to beneficiary. The  
7 trustee has the following powers:

- 8 (1) to make loans out of trust property to the
- 9 beneficiary on terms and conditions that the trustee
- 10 determines are fair and reasonable under the circumstances;
- 11 and

- 12 (2) to guarantee loans to the beneficiary by
- 13 encumbrances on trust property.

14 NEW SECTION. Section 133. Distribution to  
15 beneficiaries under legal disability. The trustee has the  
16 power to pay any sum distributable to a beneficiary, without  
17 regard to whether the beneficiary is under a legal  
18 disability, by paying the sum to the beneficiary or by  
19 paying the sum to another person for the use or benefit of  
20 the beneficiary.

21 NEW SECTION. Section 134. Nature and value of  
22 distributions. The trustee has the power to effect  
23 distribution of property and money in divided or undivided  
24 interests and to adjust resulting differences in valuation.  
25 A distribution in kind may be made pro rata or non-pro rata.

1        **NEW SECTION. Section 135.** Hiring persons. The trustee  
 2 has the power to hire persons, including accountants,  
 3 attorneys, auditors, investment advisors, or other agents,  
 4 even if they are associated or affiliated with the trustee,  
 5 to advise or assist the trustee in the performance of  
 6 administrative duties.

7        **NEW SECTION. Section 136.** Execution and delivery of  
 8 instruments. The trustee has the power to execute and  
 9 deliver all instruments which are needed to accomplish or  
 10 facilitate the exercise of the powers vested in the trustee.

11       **NEW SECTION. Section 137.** Actions and proceedings.  
 12 The trustee has the power to prosecute or defend actions,  
 13 claims, or proceedings for the protection of trust property  
 14 and of the trustee in the performance of the trustee's  
 15 duties.

16       **NEW SECTION. Section 138.** Short title. [Sections 138  
 17 through 150] may be cited as the "Revised Uniform Principal  
 18 and Income Act".

19       **NEW SECTION. Section 139.** Definitions. As used in  
 20 [sections 138 through 150], the following definitions apply:

21       (1) "Income beneficiary" means the person to whom  
 22 income is presently payable or for whom it is accumulated  
 23 for distribution as income.

24       (2) "Inventory value" means the adjusted basis for  
 25 federal income tax purposes.

1       (3) "Remainder beneficiary" means the person entitled  
 2 to principal, including income which has been accumulated  
 3 and added to principal.

4       (4) "Trustee" means the original trustee, any  
 5 succeeding or added trustee, and the personal representative  
 6 of a decedent's estate whenever a provision of this part is  
 7 applicable to the estate.

8       **NEW SECTION. Section 140.** Duty of trustee as to  
 9 receipts and expenditures. (1) A trust shall be administered  
 10 with due regard to the respective interests of income  
 11 beneficiaries and remainder beneficiaries. A trust is so  
 12 administered with respect to the allocation of receipts and  
 13 expenditures if a receipt is credited or an expenditure is  
 14 charged to income or principal or partly to each in any of  
 15 the following ways:

16       (a) in accordance with the terms of the trust  
 17 instrument, notwithstanding contrary provisions of this  
 18 part;

19       (b) in the absence of any contrary terms of the trust  
 20 instrument, in accordance with the provisions of this part;  
 21 or

22       (c) if neither subsection (a) nor (b) is applicable,  
 23 in accordance with the standard of care provided in [section  
 24 89] and with what is reasonable and equitable in view of the  
 25 interests of those entitled to income as well as of those

1 entitled to principal.

2 (2) If the trust gives the trustee discretion in  
3 crediting a receipt or charging an expenditure to income or  
4 principal or partly to each, no inference that the trustee  
5 has improperly exercised such discretion arises from the  
6 fact that the trustee has made an allocation contrary to a  
7 provision of this part.

8 NEW SECTION. Section 141. Income -- principal --  
9 charges. (1) Income is the return in money or property  
10 derived from the use of principal, including return received  
11 as:

12 (a) rent of real or personal property, including sums  
13 received for cancellation or renewal of a lease;

14 (b) interest on money lent, including sums received as  
15 consideration for the prepayment of principal except as  
16 provided in [section 145] on bond premium and bond discount;

17 (c) income earned during administration of a  
18 decedent's estate as provided in [section 144];

19 (d) corporate distributions as provided in [section  
20 145];

21 (e) accrued increment on bonds or other obligations  
22 issued at discount as provided in [section 145];

23 (f) receipts from business and farming operations as  
24 provided in [section 146];

25 (g) receipts from disposition of natural resources as

1 provided in [sections 147 and 148]; or

2 (h) receipts from other principal subject to depletion  
3 as provided in [section 149].

4 (2) Principal is the property which has been set aside  
5 by the owner or the person legally empowered so that it is  
6 held in trust eventually to be delivered to a remainder  
7 beneficiary, while the return or use of the principal is in  
8 the meantime taken or received by or held for accumulation  
9 for an income beneficiary. Principal includes the following:

10 (a) consideration received by the trustee on the sale  
11 or other transfer of principal or a repayment of a loan or  
12 as a refund or replacement or change in the form of  
13 principal;

14 (b) proceeds of property taken on eminent domain  
15 proceedings;

16 (c) proceeds of insurance upon property forming part  
17 of the principal except proceeds of insurance upon a  
18 separate interest of an income beneficiary;

19 (d) stock dividends, receipts on liquidation of a  
20 corporation, and other corporate distributions as provided  
21 in [section 144];

22 (e) receipts from the disposition of corporate  
23 securities as provided in [section 145];

24 (f) royalties and other receipts from disposition of  
25 natural resources as provided in [sections 147 and 148];

1 (g) receipts from other principal subject to depletion  
2 as provided in [section 149];

3 (h) any profit resulting from any change in the form  
4 of principal; or

5 (i) any allowances for depreciation established under  
6 [section 150(1)(b)].

7 (3) After determining income and principal in  
8 accordance with the terms of the trust instrument or of this  
9 part, the trustee shall charge to income or principal the  
10 expenses and other charges as provided in [section 150].

11 NEW SECTION. Section 142. When right to income arises  
12 -- apportionment of income. (1) An income beneficiary is  
13 entitled to income from the date specified in the trust  
14 instrument or, if none is specified, from the date an item  
15 of property becomes subject to the trust. In the case of an  
16 item of property becoming subject to a trust by reason of a  
17 person's death, it becomes subject to the trust as of the  
18 date of the death of the person even though there is an  
19 intervening period of administration of the person's estate.

20 (2) Upon property becoming subject to a trust by  
21 reason of a person's death:

22 (a) Receipts due but not paid at the date of death of  
23 the person are principal.

24 (b) Receipts in the form of periodic payments (other  
25 than corporate distributions to stockholders), including

1 rent, interest, or annuities, not due at the date of the  
2 death of the person shall be treated as accruing from day to  
3 day. That portion of the receipt accruing before the date of  
4 death is principal and the balance is income.

5 (3) In all other cases, any receipt from  
6 income-producing property is income even though the receipt  
7 was earned or accrued in whole or in part before the date  
8 when the property became subject to the trust.

9 (4) On termination of an income interest, the income  
10 beneficiary whose interest is terminated, or his or her  
11 estate, is entitled to income:

12 (a) undistributed on the date of termination;

13 (b) due but not paid to the trustee on the date of  
14 termination; and

15 (c) in the form of periodic payments (other than  
16 corporate distributions to stockholders), including rent,  
17 interest, or annuities, not due on the date of termination,  
18 accrued from day to day.

19 (5) Corporate distributions to stockholders shall be  
20 treated as due on the day fixed by the corporation for  
21 determination of stockholders of record entitled to  
22 distribution or, if no date is fixed, on the date of  
23 declaration of the distribution by the corporation.

24 NEW SECTION. Section 143. Income earned during  
25 administration of decedent's estate. (1) Unless the will



otherwise provides and subject to subsection (2), all expenses incurred in connection with the settlement of a decedent's estate, including debts, funeral expenses, estate taxes, interest and penalties concerning taxes, family allowances, fees of attorneys and personal representatives, and court costs, shall be charged against the principal of the estate.

(2) Unless the will otherwise provides, income from the property of a decedent's estate after the death of the testator and before distribution, including income from property used to discharge liabilities, shall be determined in accordance with the rules applicable to a trustee under [sections 1 through 164] and distributed as follows:

(a) to specific legatees and devisees, the income from the property bequeathed or devised to them respectively, less taxes, ordinary repairs, and other expenses of management and operation of the property, and an appropriate portion of interest accrued since the death of the testator and of taxes imposed on income (excluding taxes on capital gains) that accrue during the period of administration;

(b) to all other legatees and devisees, except legatees of pecuniary bequests not in trust, the balance of the income, less the balance of taxes, ordinary repairs, and other expenses of management and operation of all property from which the estate is entitled to income, interest

accrued since the death of the testator, and taxes imposed on income (excluding taxes on capital gains) that accrue during the period of administration, in proportion to their respective interests in the undistributed property of the estate computed at times of distribution on the basis of inventory value.

(3) Income received by a trustee under subsection (2) shall be treated as income of the trust.

#### NEW SECTION. Section 144. Corporate distributions.

(1) Corporate distributions of shares of the distributing corporation, including distributions in the form of a stock split or stock dividend, are principal. A right to subscribe to shares or other securities issued by the distributing corporation accruing to stockholders on account of their stock ownership and the proceeds of any sale of the right, are principal.

(2) Except to the extent that the corporation indicates that some part of a corporate distribution is a settlement of preferred or guaranteed dividends accrued since the trustee became a stockholder or is in lieu of an ordinary cash dividend, a corporate distribution is principal if the distribution is pursuant to any of the following:

(a) a call of shares;

(b) a merger, consolidation, reorganization, or other

1 plan by which assets of the corporation are acquired by  
2 another corporation; or

3 (c) a total or partial liquidation of the corporation,  
4 including any distribution which the corporation indicates  
5 is a distribution in total or partial liquidation or any  
6 distribution of assets, other than cash, pursuant to a court  
7 decree or final administrative order by a government agency  
8 ordering distribution of the particular assets.

9 (3) Distributions made from ordinary income by a  
10 regulated investment company or by a trust qualifying and  
11 electing to be taxed under federal law as a real estate  
12 investment trust are income. All other distributions made by  
13 the company or trust, including distributions from capital  
14 gains, depreciation, or depletion, whether in the form of  
15 cash or an option to take new stock or cash or an option to  
16 purchase additional shares, are principal.

17 (4) Except as provided in subsections (1) through (3),  
18 all corporate distributions are income, including cash  
19 dividends, distributions of or rights to subscribe to shares  
20 or securities or obligations of corporations other than the  
21 distributing corporation, and the proceeds of the rights or  
22 property distributions. Except as provided in subsections  
23 (2) and (3), if the distributing corporation gives a  
24 stockholder an option to receive a distribution either in  
25 cash or in its own shares, the distribution chosen is

1 income.

2 (5) The trustee may rely upon any statement of the  
3 distributing corporation as to any fact relevant under any  
4 provision of this part concerning the source or character of  
5 dividends or distributions of corporate assets.

6 **NEW SECTION. Section 145. Bond premium and discount.**

7 (1) Bonds or other obligations for the payment of money are  
8 principal at their inventory value, except as provided in  
9 subsection (2) for discount bonds. No provision shall be  
10 made for amortization of bond premiums or for accumulation  
11 for discount. The proceeds of sale, redemption, or other  
12 disposition of the bonds or obligations are principal.

13 (2) The increment in value of a bond or other  
14 obligation for the payment of money payable at a future time  
15 in accordance with a fixed schedule of appreciation in  
16 excess of the price at which it was issued is distributable  
17 as income. The increment in value is distributable to the  
18 beneficiary who was the income beneficiary at the time of  
19 increment from the first principal cash available or, if  
20 none is available, when realized by sale, redemption, or  
21 other disposition. Whenever unrealized increment is  
22 distributed as income but out of principal, the principal  
23 shall be reimbursed for the increment when realized.

24 **NEW SECTION. Section 146. Business and farming**  
25 **operations.** (1) If a trustee uses any part of the principal

in the continuance of a business of which the trustor was a sole proprietor or a partner, the net profits of the business, computed in accordance with recognized methods of accounting for a comparable business, are income. If a loss results in any fiscal or calendar year, the loss falls on principal and may not be carried into any other fiscal or calendar year for purposes of calculating net income.

(2) Recognized methods of accounting for a comparable business shall be used to determine income from an agricultural or farming operation, including the raising of animals or the operation of a nursery.

**NEW SECTION. Section 147. Disposition of natural resources.** (1) If any part of the principal consists of a right to receive royalties, overriding or limited royalties, working interests, production payments, net profit interests, or other interests in minerals or other natural resources in, on, or under land, the receipts from taking the natural resources from the land shall be allocated as follows:

(a) If received as rent on a lease or extension payments on a lease, the receipts are income.

(b) If received from a production payment, the receipts are income to the extent of any factor for interest or its equivalent provided in the governing instrument. There shall be allocated to principal the fraction of the

balance of the receipts which the unrecovered cost of the production payment bears to the balance owed on the production payment, exclusive of any factor for interest or its equivalent. The receipts not allocated to principal are income.

(c) If received as a royalty, overriding or limited royalty or bonus, or from a working, net profit, or any other interest in minerals or other natural resources, receipts not provided for in subsections (1)(a) and (1)(b) shall be apportioned on a yearly basis in accordance with this paragraph whether or not any natural resource was being taken from the land at the time the trust was established. The receipts shall be allocated entirely to income or apportioned between income and principal as the trustee in its discretion may determine, but the amount added to principal as an allowance for depletion may not exceed the lesser of:

(i) the percentage of gross receipts allowed as a deduction for depletion in computing taxable income for federal income tax purposes or

(ii) 50% of the net receipts remaining after payment of expenses, direct and indirect, computed without allowance for depletion.

(2) This section does not apply to timber, water, soil, sod, dirt, turf, or mosses.

1        **NEW SECTION. Section 148.** Timber. If any part of the  
 2 principal consists of land from which merchantable timber  
 3 may be removed, the receipts from taking the timber from the  
 4 land shall be allocated in accordance with [section  
 5 140(1)(c)].

6        **NEW SECTION. Section 149.** Other property subject to  
 7 depletion. Except as provided in [sections 147 and 148], if  
 8 the principal consists of property subject to depletion,  
 9 including leaseholds, patents, copyrights, royalty rights,  
 10 and rights to receive payments on a contract for deferred  
 11 compensation, receipts from the property, not in excess of  
 12 5% per year of its inventory value, are income, and the  
 13 balance is principal.

14        **NEW SECTION. Section 150.** Charges against income and  
 15 principal. (1) The following charges shall be made against  
 16 income:

17        (a) ordinary expenses incurred in connection with the  
 18 administration, management, or preservation of the trust  
 19 property, including:

20        (i) regularly recurring taxes assessed against any  
 21 portion of the principal;

22        (ii) water rates;

23        (iii) premiums on insurance taken upon the interests of  
 24 the income beneficiary, remainder beneficiary, or trustee;

25        (iv) interest paid by the trustee; and

1        (v) ordinary repairs;

2        (b) a reasonable allowance for depreciation on  
 3 property subject to depreciation under generally accepted  
 4 accounting principles, but no allowance may be made for  
 5 depreciation on that portion of any real property used by a  
 6 beneficiary as a residence or for depreciation of any  
 7 property held by the trustee on July 1, 1983, for which the  
 8 trustee was not then making an allowance for depreciation;

9        (c) not less than one-half of court costs, attorney  
 10 fees, and other fees on periodic judicial accounting, unless  
 11 the court directs otherwise;

12        (d) court costs, attorney fees, and fees on other  
 13 accountings or judicial proceedings if the matter primarily  
 14 concerns the income interest, unless the court directs  
 15 otherwise;

16        (e) not less than one-half of the trustee's regular  
 17 compensation, whether based on a percentage of principal or  
 18 income, and all expenses reasonably incurred for current  
 19 management of principal and application of income, unless  
 20 the court directs otherwise; and

21        (f) any tax levied upon receipts defined as income  
 22 under [sections 138 through 150] or the trust instrument and  
 23 payable by the trustee.

24        (2) If charges against income are of unusual amount,  
 25 the trustee may, by means of reserves or other reasonable

means, charge them over a reasonable period of time and withhold from distribution sufficient sums to regularize distributions.

(3) (a) The following charges shall be made against principal:

(i) trustee's compensation not chargeable to income under subsections (1)(d) and (1)(e);

(ii) special compensation of trustees;

(iii) expenses reasonably incurred in connection with principal, court costs, and attorney fees primarily concerning matters of principal; and

(iv) trustee's compensation computed on principal as an acceptance, distribution, or termination fee;

(b) charges not provided for in subsection (1), including:

(i) the costs of investing and reinvesting principal;

(ii) the payments on principal of an indebtedness, including a mortgage amortized by periodic payments of principal;

(iii) expenses for preparation of property for rental or sale; and

(iv) unless the court directs otherwise, expenses incurred in maintaining or defending any action to construe the trust or protect it or the property or assure the title of any trust property;

(c) extraordinary repairs or expenses incurred in making a capital improvement to principal, including special assessments, but a trustee may establish an allowance for depreciation out of income to the extent permitted by subsection (1)(b) and by [section 146];

(d) any tax levied upon profit, gain, or other receipts allocated to principal, notwithstanding denomination of the tax as an income tax by the taxing authority; and

(e) if an estate or inheritance tax is levied in respect to a trust in which both an income beneficiary and a remainder beneficiary have an interest, any amount apportioned to the trust, including interest and penalties, even though the income beneficiary also has rights in the principal.

(4) Regularly recurring charges payable from income shall be apportioned to the same extent and in the same manner that income is apportioned under [section 142].

**NEW SECTION. Section 151.** Breach of trust. A violation by the trustee of any duty that the trustee owes the beneficiary is a breach of trust.

**NEW SECTION. Section 152.** Trustee's liability to beneficiary for acts of agent. (1) Except as provided in subsection (2), the trustee is not liable to the beneficiary for the acts or omissions of an agent.

(2) The trustee is liable to the beneficiary for an act or omission of an agent employed by the trustee in the administration of the trust that would be a breach of the trust if committed by the trustee under any of the following circumstances:

(a) whenever the trustee has the power to direct the act of the agent;

(b) whenever the trustee delegates to the agent the authority to perform an act that the trustee is under a duty not to delegate;

(c) whenever the trustee does not use reasonable care in the selection of the agent or the retention of the agent selected by the trustee;

(d) whenever the trustee does not exercise proper supervision over the agent's conduct in a case where the trustee has the power to supervise the agent;

(e) whenever the trustee conceals the act of the agent; or

(f) whenever the trustee neglects to take reasonable steps to compel the agent to redress the wrong in a case where the trustee knows of the agent's acts or omissions.

(3) The liability of a trustee for acts or omissions of agents that occurred before October 1, 1989, is governed by prior law and not by this section.

NEW SECTION. **Section 153.** Trustee's liability to

beneficiary for acts of cotrustee. (1) Except as provided in subsection (2), a trustee is not liable to the beneficiary for a breach of trust committed by a cotrustee.

(2) A trustee is liable to the beneficiary for a breach committed by a cotrustee under any of the following circumstances:

(a) whenever the trustee participates in a breach of trust committed by the cotrustee;

(b) whenever the trustee improperly delegates the administration of the trust to the cotrustee;

(c) whenever the trustee approves, knowingly acquiesces in, or conceals a breach of trust committed by the cotrustee;

(d) whenever the trustee negligently enables the cotrustee to commit a breach of trust; or

(e) whenever the trustee neglects to take reasonable steps to compel the cotrustee to redress a breach of trust in a case where the trustee knows or has information from which the trustee reasonably should have known of the breach.

(3) The liability of a trustee for acts or omissions of a cotrustee that occurred before October 1, 1989, is governed by prior law and not by this section.

NEW SECTION. **Section 154.** Trustee's liability to beneficiary for acts of predecessor. (1) Except as provided

in subsection (2), a successor trustee is not liable to the beneficiary for a breach of trust committed by a predecessor trustee.

(2) A successor trustee is liable to the beneficiary for breach of trust involving acts or omissions of a predecessor trustee in any of the following circumstances:

(a) whenever the successor trustee knows or has information from which the successor trustee reasonably should have known of a situation constituting a breach of trust committed by the predecessor trustee, and the successor trustee improperly permits it to continue;

(b) whenever the successor trustee neglects to take reasonable steps to compel the predecessor trustee to deliver the trust property to the successor trustee; or

(c) whenever the successor trustee neglects to take reasonable steps to redress a breach of trust committed by the predecessor trustee in a case where the successor trustee knows or has information from which the successor trustee should have known of the predecessor trustee's breach.

(3) The liability of a trustee for acts or omissions of a predecessor trustee that occurred before October 1, 1989, is governed by prior law and not by this section.

**NEW SECTION. Section 155.** Remedies for breach of trust. (1) If a trustee commits a breach of trust, or

threatens to commit a breach of trust, a beneficiary or cotrustee of the trust may commence a proceeding for any of the following purposes that is appropriate:

(a) to compel the trustee to perform the trustee's duties;

(b) to enjoin the trustee from committing a breach of trust;

(c) to compel the trustee to redress a breach of trust by payment of money or otherwise;

(d) to appoint a receiver or temporary trustee to take possession of the trust property and administer the trust;

(e) to remove the trustee;

(f) subject to [section 210], to set aside acts of the trustee;

(g) to reduce or deny compensation of the trustee;

(h) subject to [section 210], to impose an equitable lien or a constructive trust on trust property; or

(i) subject to [section 210], to trace trust property that has been wrongfully disposed of and recover the property or its proceeds.

(2) The provision of remedies for breach of trust in subsection (1) does not prevent resort to any other appropriate remedy provided by statute or the common law.

**NEW SECTION. Section 156.** Remedies for breach exclusively in equity. The remedies of a beneficiary against

1 the trustee are exclusively in equity.

2 **NEW SECTION. Section 157.** Measure of liability for  
3 breach of trust. (1) If the trustee commits a breach of  
4 trust, the trustee is chargeable with any of the following  
5 that is appropriate under the circumstances:

6 (a) any loss or depreciation in value of the trust  
7 estate resulting from the breach of trust, with interest;

8 (b) any profit made by the trustee through the breach  
9 of trust, with interest; or

10 (c) any profit that would have accrued to the trust  
11 estate if the loss of profit is the result of the breach of  
12 trust.

13 (2) If the trustee has acted reasonably under the  
14 circumstances as known to the trustee, the court, in its  
15 discretion, may excuse the trustee in whole or in part from  
16 liability under subsection (1) if it would be equitable to  
17 do so.

18 **NEW SECTION. Section 158.** Measure of liability for  
19 interest. If the trustee is liable for interest pursuant to  
20 [section 157], the trustee is liable for the greater of the  
21 following amounts:

22 (1) the amount of interest that accrues at the legal  
23 rate on judgments; or

24 (2) the amount of interest actually received.

25 **NEW SECTION. Section 159.** Limitations on proceedings

1 against trustee. (1) Unless a claim is previously barred by  
2 adjudication, consent, limitation, or otherwise:

3 (a) If a beneficiary has received an interim or final  
4 account in writing, or other written report, that adequately  
5 discloses the existence of a claim against the trustee for  
6 breach of trust, the claim is barred as to that beneficiary  
7 unless a proceeding to assert the claim is commenced within  
8 3 years after receipt of the account or report. An account  
9 or report adequately discloses existence of a claim if it  
10 provides sufficient information so that the beneficiary  
11 knows of the claim or reasonably should have inquired into  
12 the existence of the claim.

13 (b) If an interim or final account or other report  
14 does not adequately disclose the existence of a claim  
15 against the trustee for breach of trust, the claim is barred  
16 as to that beneficiary unless a proceeding to assert the  
17 claim is commenced within 3 years after the beneficiary  
18 discovered, or reasonably should have discovered, the  
19 existence of the claim.

20 (2) For the purpose of subsection (1), a beneficiary  
21 is considered to have received an account or report, as  
22 follows:

23 (a) in the case of an adult who is reasonably capable  
24 of understanding the account or report, if it is received by  
25 the adult personally;



(b) in the case of an adult who is not reasonably capable of understanding the account or report, if it is received by the person's legal representative, including a guardian ad litem or other person appointed for this purpose; or

(c) in the case of a minor, if it is received by the minor's guardian or, if the minor does not have a guardian, if it is received by the minor's parent so long as the parent does not have a conflict of interest.

(3) The limitations period applicable to actions by a beneficiary against a trustee on a claim that arose before October 1, 1989, is governed by this section, except that a claim arising before October 1, 1989, is not barred by this section until October 1, 1990.

**NEW SECTION. Section 160. Exculpation of trustee.** (1) Except as provided in subsection (2), the trustee can be relieved of liability for breach of trust by provisions in the trust instrument.

(2) A provision in the trust instrument is not effective to relieve the trustee of liability:

(a) for breach of trust committed intentionally, with gross negligence, or with reckless indifference to the interest of the beneficiary; or

(b) for any profit that the trustee derives from a breach of trust.

**NEW SECTION. Section 161. Nonliability for following instructions under revocable trust.** (1) Notwithstanding [section 160], a trustee of a revocable trust is not liable to a beneficiary for any act performed or omitted pursuant to written directions from the person holding the power to revoke, including a person to whom the power to direct the trustee is delegated.

(2) Subsection (1) applies to a trust that is revocable in part with respect to the interest of the beneficiary in that part of the trust property.

**NEW SECTION. Section 162. Consent of beneficiary to relieve trustee of liability for breach of trust.** (1) Except as provided in subsections (2) and (3), a beneficiary may not hold the trustee liable for an act or omission of the trustee as a breach of trust if the beneficiary consented to the act or omission before or at the time of the act or omission.

(2) The consent of the beneficiary does not preclude the beneficiary from holding the trustee liable for a breach of trust in any of the following circumstances:

(a) whenever the beneficiary was under an incapacity at the time of the consent or of the act or omission;

(b) whenever the beneficiary at the time consent was given did not know of his rights and of the material facts that the trustee knew or should have known and that the

1 trustee did not reasonably believe that the beneficiary  
2 knew; or

3 (c) whenever the consent of the beneficiary was  
4 induced by improper conduct of the trustee.

5 (3) Whenever the trustee has an interest in the  
6 transaction adverse to the interest of the beneficiary, the  
7 consent of the beneficiary does not preclude the beneficiary  
8 from holding the trustee liable for a breach of trust under  
9 any of the circumstances described in subsection (2) or  
10 whenever the transaction to which the beneficiary consented  
11 was not fair and reasonable to the beneficiary.

12 NEW SECTION. Section 163. Discharge of trustee's  
13 liability by release or contract. (1) Except as provided in  
14 subsection (2), a beneficiary may be precluded from holding  
15 the trustee liable for a breach of trust by the  
16 beneficiary's release or contract effective to discharge the  
17 trustee's liability to the beneficiary for that breach.

18 (2) A release or contract is not effective to  
19 discharge the trustee's liability for a breach of trust in  
20 any of the following circumstances:

21 (a) whenever the beneficiary was under an incapacity  
22 at the time of making the release or contract;

23 (b) whenever the beneficiary did not know of his  
24 rights and of the material facts:

25 (i) that the trustee knew or reasonably should have

1 known; and

2 (ii) that the trustee did not reasonably believe that  
3 the beneficiary knew;

4 (c) whenever the release or contract of the  
5 beneficiary was induced by improper conduct of the trustee;  
6 or

7 (d) whenever the transaction involved a bargain with  
8 the trustee that was not fair and reasonable.

9 NEW SECTION. Section 164. Discharge of trustee's  
10 liability by subsequent affirmance. (1) Except as provided  
11 in subsection (2), if the trustee, in breach of trust,  
12 enters into a transaction that the beneficiary may at his  
13 option reject or affirm, and the beneficiary affirms the  
14 transaction, the beneficiary may not thereafter reject it  
15 and hold the trustee liable for any loss occurring after the  
16 trustee entered into the transaction.

17 (2) The affirmance of a transaction by the beneficiary  
18 does not preclude the beneficiary from holding a trustee  
19 liable for a breach of trust if, at the time of the  
20 affirmance, any of the following circumstances existed:

21 (a) the beneficiary was under an incapacity;

22 (b) the beneficiary did not know of his rights and of  
23 the material facts:

24 (i) that the trustee knew or reasonably should have  
25 known; and

(ii) that the trustee did not reasonably believe that the beneficiary knew;

(c) the affirmance was induced by improper conduct of the trustee; or

(d) the transaction involved a bargain with the trustee that was not fair and reasonable.

**NEW SECTION. Section 165. Subject matter jurisdiction.** (1) The district court having jurisdiction over the trust pursuant to [sections 1 through 215] has exclusive jurisdiction of proceedings concerning the internal affairs of trusts.

(2) The district court having jurisdiction over the trust pursuant to [sections 1 through 215] has concurrent jurisdiction of the following:

(a) actions and proceedings to determine the existence of trusts;

(b) actions and proceedings by or against creditors or debtors of trusts; and

(c) other actions and proceedings involving trustees and third persons.

**NEW SECTION. Section 166. Full-power court.** In proceedings concerning the internal affairs of trusts commenced pursuant to [sections 1 through 215], the court has all the powers of a district court exercising its general jurisdiction.

**NEW SECTION. Section 167. Principal place of administration of trust.** (1) The principal place of administration of the trust is the usual place where the day-to-day activity of the trust is carried on by the trustee or its representative who is primarily responsible for the administration of the trust.

(2) If the principal place of administration of the trust cannot be determined under subsection (1), it shall be determined as follows:

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

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

**NEW SECTION. Section 168. Jurisdiction over trustees and beneficiaries.** Subject to [section 169]:

(1) by accepting the trusteeship of a trust having its principal place of administration in this state the trustee submits personally to the jurisdiction of the court under [sections 1 through 215]; and

(2) to the extent of their interests in the trust, all beneficiaries of a trust having its principal place of administration in this state are subject to the jurisdiction of the court under [sections 1 through 215].

**NEW SECTION. Section 169.** Basis of jurisdiction over trust, trust property, and trust parties. The court may exercise jurisdiction in proceedings under this division on any basis permitted by Rule 4 of the Rules of Civil Procedure.

**NEW SECTION. Section 170.** Venue. (1) The proper county for commencement of a proceeding pursuant to [sections 165 through 178] is either of the following:

(a) in the case of a living trust, the county where the principal place of administration of the trust is located; or

(b) in the case of a testamentary trust, either the county where the decedent's estate is administered or where the principal place of administration of the trust is located.

(2) If a living trust has no trustee, the proper county for commencement of a proceeding for appointing a trustee is the county where the trust property, or some portion of the trust property, is located.

(3) Except as otherwise provided in subsections (1) and (2), the proper county for commencement of a proceeding

pursuant to [sections 1 through 215] is determined by the rules applicable to civil actions generally.

**NEW SECTION. Section 171.** Jury trial. There is no right to a jury trial in proceedings under [sections 1 through 215] concerning the internal affairs of trusts.

**NEW SECTION. Section 172.** Application of part. This part applies to notice in proceedings commenced pursuant to [sections 1 through 215] or notice otherwise required or permitted by [sections 1 through 215].

**NEW SECTION. Section 173.** Manner of mailing -- when mailing complete. (1) If a notice or other paper is required or permitted to be mailed, it shall be sent by first-class mail.

(2) Mailing is complete when the notice or other paper is deposited in the mail, postage prepaid, addressed to the person to whom it is mailed.

**NEW SECTION. Section 174.** Personal delivery instead of mailing. If a notice or other paper is required or permitted to be mailed, it may be delivered personally to the person to whom it is required or permitted to be mailed.

**NEW SECTION. Section 175.** Proof of giving notice -- conclusiveness of order. (1) Proof of the giving of notice shall be made at or before the hearing to the satisfaction of the court.

(2) If it appears to the satisfaction of the court

that notice has been regularly given or that the party entitled to notice has waived, the court shall so find in its order. When the order becomes final, it is conclusive on all persons, whether or not in being.

**NEW SECTION. Section 176.** Additional notice. (1) The court may, on its own motion or on motion of a trustee or other person interested in the trust, require that further or additional notice be given at any state of the proceeding. The court may prescribe the form and method of the notice to be given.

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

**NEW SECTION. Section 177.** Shortening time. The court may for good cause shorten the time for giving a notice.

**NEW SECTION. Section 178.** Notice of postponed hearings. The court may continue or postpone any hearing, from time to time, in the interest of justice, and no further notice of the continued or postponed hearing is required unless otherwise ordered by the court.

**NEW SECTION. Section 179.** Petitioners -- grounds for petition. (1) Except as provided in [section 68], a trustee or beneficiary of a trust may petition the court under [sections 165 through 203] concerning the internal affairs of the trust or to determine the existence of the trust.

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

(a) determining questions of construction of a trust instrument;

(b) determining the existence or nonexistence of any immunity, power, privilege, duty, or right;

(c) determining the validity of a trust provision;

(d) ascertaining beneficiaries and determining to whom property shall pass or be delivered upon final or partial termination of the trust, to the extent the determination is not made by the trust instrument;

(e) settling the accounts and passing upon the acts of the trustee, including the exercise of discretionary powers;

(f) instructing the trustee;

(g) compelling the trustee to report information about the trust or account to the beneficiary, if:

(i) the trustee has failed to submit a requested report or account within 60 days after written request of the beneficiary; and

(ii) no report or account has been made within 6 months preceding the request;

(h) granting powers to the trustee;

(i) fixing or allowing payment of the trustee's compensation;

1 (j) appointing or removing a trustee;  
 2 (k) accepting the resignation of a trustee;  
 3 (l) compelling redress of a breach of the trust by any  
 4 available remedy;  
 5 (m) approving or directing the modification or  
 6 termination of the trust;  
 7 (n) approving or directing the combination or division  
 8 of trusts;  
 9 (o) amending or conforming the trust instrument in the  
 10 manner required to qualify a decedent's estate for the  
 11 charitable estate tax deduction under federal law, including  
 12 the addition of mandatory governing instrument requirements  
 13 for a charitable remainder trust as required by final  
 14 regulations and rulings of the United States internal  
 15 revenue service, in any case in which all parties interested  
 16 in the trust have submitted written agreement to the  
 17 proposed changes or written disclaimer of interest;  
 18 (p) authorizing or directing transfer of a trust or  
 19 trust property to or from another jurisdiction;  
 20 (q) directing transfer of a testamentary trust subject  
 21 to continuing court jurisdiction from one county to another;  
 22 (r) approving removal of a testamentary trust from  
 23 continuing court jurisdiction; or  
 24 (s) reforming or excusing compliance with the  
 25 governing instrument of an organization pursuant to [section

1 104].

2 **NEW SECTION. Section 180. Commencement of proceeding.**

3 (1) A proceeding under [sections 165 through 203] is  
 4 commenced by filing a verified petition stating facts  
 5 showing that the petition is authorized under this chapter  
 6 and the grounds of the petition.

7 (2) When a petition that requires a hearing is filed  
 8 with the court clerk, the clerk shall set the matter for  
 9 hearing.

10 **NEW SECTION. Section 181. Dismissal of petition.** The  
 11 court may dismiss a petition if it appears that the  
 12 proceeding is not reasonably necessary for the protection of  
 13 the interests of the trustee or beneficiary.

14 **NEW SECTION. Section 182. Notice.** At least 14 days  
 15 before the time set for the hearing on the petition, the  
 16 petitioner shall cause notice of the time and place of  
 17 hearing to be mailed to any of the following persons who are  
 18 not petitioners:

19 (1) all trustees;  
 20 (2) all beneficiaries who are entitled to notice; and  
 21 (3) the attorney general, if the petition is related  
 22 to a charitable trust subject to the jurisdiction of the  
 23 attorney general, unless the attorney general waives notice.

24 **NEW SECTION. Section 183. Request for special notice.**

25 (1) If proceedings involving a trust are pending, a

1 beneficiary of the trust may, in person or by attorney,  
 2 serve on the trustee or the trustee's attorney and file with  
 3 the court clerk where the proceedings are pending a written  
 4 request stating that the beneficiary desires special notice  
 5 of the filing of petitions in the proceeding relating to any  
 6 or all of the purposes described in [section 179] and giving  
 7 an address for receiving notice by mail. Proof of service of  
 8 the request on the trustee shall be filed with the court  
 9 clerk when the request is filed.

10 (2) Except as provided in subsection (3), after  
 11 serving and filing a request and proof of service pursuant  
 12 to subsection (1), the beneficiary is entitled to notice  
 13 pursuant to [section 182].

14 (3) A request for special notice made by a beneficiary  
 15 whose right to notice is restricted by [section 70] is not  
 16 effective.

17 NEW SECTION. Section 184. Request for copy of  
 18 petition. If a trustee or beneficiary has served and filed  
 19 either a notice of appearance, in person or by counsel,  
 20 directed to the petitioner or the petitioner's counsel in  
 21 connection with a particular petition and proceeding or a  
 22 written request for a copy of the petition, and has given an  
 23 address to which notice or a copy of the petition may be  
 24 mailed or delivered, the petitioner shall cause a copy of  
 25 the petition to be mailed to that person within 5 days after

1 service of the notice of appearance or receipt of the  
 2 request.

3 NEW SECTION. Section 185. Authority to make necessary  
 4 orders -- temporary trustee. The court in its discretion may  
 5 make any orders and take any other action necessary or  
 6 proper to dispose of the matters presented by the petition,  
 7 including appointment of a temporary trustee to administer  
 8 the trust in whole or in part.

9 NEW SECTION. Section 186. Appeal. An appeal may be  
 10 taken from the grant or denial of any final order made under  
 11 [sections 165 through 203], except the following:

12 (1) compelling the trustee to submit an account or  
 13 report acts as trustee to a beneficiary pursuant to [section  
 14 179(2)(g)];

15 (2) accepting the resignation of a trustee pursuant to  
 16 [section 179(2)(k)]; or

17 (3) approving removal of a testamentary trust from  
 18 continuing court jurisdiction pursuant to [section  
 19 179(2)(r)].

20 NEW SECTION. Section 187. Appointment of guardian ad  
 21 litem. (1) The court may, on its own motion or on request of  
 22 a trustee or other person interested in the trust, appoint a  
 23 guardian ad litem at any stage of a proceeding concerning  
 24 the trust to represent the interest of any of the following  
 25 persons, if the court determines that representation of the

1 interest otherwise would be inadequate:

- 2 (a) a minor;
- 3 (b) an incapacitated person;
- 4 (c) an unborn person;
- 5 (d) an unascertained person;
- 6 (e) a person whose identity or address is unknown; or
- 7 (f) a designated class of persons who are not
- 8 ascertained or are not in being.

9 (2) If not precluded by a conflict of interest, a  
10 guardian ad litem may be appointed to represent several  
11 persons or interests.

12 (3) The reasonable expenses of the guardian ad litem,  
13 including compensation and attorney's fees, shall be  
14 determined by the court and paid as the court orders, either  
15 out of trust property or by the petitioner.

16 (4) If no guardian ad litem is appointed, an unborn  
17 person or an unascertained person is bound by an order to  
18 the extent his or her interest is adequately represented by  
19 another party having a substantially identical interest in  
20 the proceeding.

21 NEW SECTION. Section 188. Intermittent judicial  
22 intervention in trust administration. The administration of  
23 trusts is intended to proceed expeditiously and free of  
24 judicial intervention, subject to the jurisdiction of the  
25 court.

1 NEW SECTION. Section 189. Enforcement of  
2 beneficiary's rights under charitable trust by attorney  
3 general. In a case involving a charitable trust subject to  
4 the jurisdiction of the attorney general, the attorney  
5 general may petition under [sections 165 through 203].

6 NEW SECTION. Section 190. Application of part. (1)  
7 [Sections 190 through 195] apply to all of the following:

8 (a) a trust that is subject to [sections 1 through  
9 215]; and

10 (b) any other trust to which the provisions of  
11 [sections 165 through 203] are made applicable by statute or  
12 trust instrument.

13 (2) [Sections 190 through 195] do not prevent the  
14 transfer of the place of administration of a trust or of  
15 trust property to another jurisdiction by any other  
16 available means.

17 NEW SECTION. Section 191. Transfer of place of  
18 administration or property from Montana. (1) The court may  
19 make an order for the transfer of the place of  
20 administration of a trust or the transfer of some or all of  
21 the trust property to a jurisdiction outside this state as  
22 provided in [sections 165 through 203].

23 (2) Except as otherwise provided in [sections 190  
24 through 195], proceedings under [sections 165 through 203]  
25 are governed by [sections 190 through 195].



**NEW SECTION. Section 192.** Contents of petition. The petition for transfer shall set forth all of the following:

(1) the names and places of residence of the following:

(a) the trustee administering the trust in this state; and

(b) the trustee, including any domiciliary trustee, who will administer the trust or trust property in the other jurisdiction;

(2) the names, ages, and places of residence of the living beneficiaries, as far as known to the petitioner;

(3) whether the trustee who will administer the trust in the other jurisdiction has agreed to accept the trust. If so, the acceptance or a copy shall be attached as an exhibit to the petition or otherwise filed with the court;

(4) a general statement of the qualifications of the trustee who will administer the trust in the other jurisdiction and the amount of fiduciary bond, if any. If the trustee is an individual, the statement shall include the trustee's age;

(5) a general statement of the nature and value of the property of any trust of the same trustor being administered in the other jurisdiction by the trustee who will administer the trust in the other jurisdiction;

(6) the name of the court, if any, having jurisdiction

of the trustee in the other jurisdiction or of its accounts or in which a proceeding may be had with respect to administration of the trust or the trustee's accounts;

(7) a statement of the character, condition, location, and value of the trust property sought to be transferred;

(8) whether there is any pending civil action in this state against the trustee arising out of the administration of the trust sought to be transferred; and

(9) a statement of the reasons for the transfer.

**NEW SECTION. Section 193.** Notice and hearing. (1) At least 14 days before the time set for the hearing on the petition, the petitioner shall cause notice of the time and place of the hearing to be mailed to each of the persons named in the petition at their respective addresses as stated in the petition.

(2) Any person interested in the trust, as trustee, beneficiary, or otherwise, may appear and file written grounds in opposition to the petition.

**NEW SECTION. Section 194.** Order granting transfer. The court may, in its discretion, grant the petition and order the trustee to transfer the trust property or to transfer the place of administration of the trust to the other jurisdiction if, after hearing, all of the following appear to the court:

(1) the transfer of the trust property to a trustee in

1 another jurisdiction, or the transfer of the place of  
2 administration of the trust to another jurisdiction, will  
3 promote the best interests of the trust and those interested  
4 in it, taking into account the interest in the economical  
5 and convenient administration of the trust;

6 (2) the transfer will not violate the trust  
7 instrument; and

8 (3) any new trustee to whom the trust property is to  
9 be transferred is qualified, willing, and able to administer  
10 the trust or trust property under the trust instrument.

11 NEW SECTION. Section 195. Manner of transfer --  
12 discharge of trustee. If a transfer is ordered under this  
13 chapter, the court may direct the manner of transfer and  
14 impose terms and conditions as may be just, including, but  
15 not limited to, a requirement for the substitution of a  
16 successor trustee in any pending litigation in this state.  
17 The delivery of property in accordance with the order of the  
18 court is a discharge of the trustee in relation to all  
19 property embraced in the order.

20 NEW SECTION. Section 196. Application. (1) [Sections  
21 196 through 203] apply to a trust, or portion thereof,  
22 administered in a jurisdiction outside this state.

23 (2) [Sections 196 through 203] do not prevent the  
24 transfer of the place of administration of a trust or trust  
25 property to this state by any other available means.

1 NEW SECTION. Section 197. Transfer of place of  
2 administration or property to Montana. (1) The court may  
3 make an order accepting the transfer of the place of  
4 administration of a trust from another jurisdiction to this  
5 state or the transfer of some or all of the trust property  
6 in another jurisdiction to a trustee in this state as  
7 provided in [sections 196 through 203].

8 (2) Except as otherwise provided in [sections 196  
9 through 203], proceedings under [sections 196 through 203]  
10 are governed by this chapter.

11 NEW SECTION. Section 198. Venue. (1) If the petition  
12 requests that a resident of this state be appointed trustee,  
13 the petition shall be filed in the court of the county where  
14 the proposed principal place of administration of the trust  
15 pursuant to [section 167] is located.

16 (2) If the petition requests that only a nonresident  
17 of this state be appointed trustee, the petition shall be  
18 filed in the court of the county where either:

- 19 (a) any beneficiary resides; or  
20 (b) a substantial portion of the trust property to be  
21 transferred is located or will be located.

22 NEW SECTION. Section 199. Contents of petition. The  
23 petition for transfer shall set forth all of the following:

- 24 (1) the names and places of residence of the  
25 following:

(a) the trustee administering the trust in the other jurisdiction; and

(b) the proposed trustee to whom administration of the trust or trust property will be transferred;

(2) the names, ages, and places of residence of all living beneficiaries, as far as known to the petitioner;

(3) whether administration of the trust has been subject to supervision in a jurisdiction outside this state. If so, the petition shall state whether a petition or appropriate request for transfer of place of administration of the trust or trust property to this state has been filed, if necessary, with the court in the other jurisdiction, and the status of the petition or request.

(4) whether the trustee proposed to administer the trust in this state has agreed to accept the trust in this state. If the trustee has agreed, the acceptance shall be attached as an exhibit to the petition or otherwise filed with the court.

(5) a general statement of the qualifications of the trustee proposed to administer the trust in this state and the amount of any bond to be requested. If the trustee is an individual, the statement shall include the trustee's age.

(6) a copy of the trust instrument or a statement of the terms of the trust instrument in effect at the time the petition is filed, including all amendments thereto;

(7) a statement of the character, condition, location, and value of the trust property sought to be transferred; and

(8) a statement of the reasons for the transfer.

**NEW SECTION. Section 200. Notice and hearing.** (1) At least 14 days before the time set for the hearing on the petition, the petitioner shall cause notice of the time and place of the hearing to be mailed to each of the persons named in the petition at their respective addresses as stated in the petition.

(2) Any person interested in the trust, as trustee, beneficiary, or otherwise, may appear and file written grounds in opposition to the petition.

**NEW SECTION. Section 201. Order accepting transfer and appointing trustee.** (1) The court may, in its discretion, grant the petition and issue an order accepting transfer of trust property or the place of administration of the trust to this state and appoint a trustee to administer the trust in this state, if, after hearing, all of the following appear to the court:

(a) the transfer of the trust property to a trustee in this state, or the transfer of the place of administration of the trust to this state, will promote the best interests of the trust and those interested in it, taking into account the interest in the economical and convenient administration

1 of the trust;

2 (b) the transfer will not violate the trust  
3 instrument;

4 (c) the trustee appointed by the court to administer  
5 the trust in this state, and to whom the trust property is  
6 to be transferred, is qualified, willing, and able to  
7 administer the trust or trust property under the trust  
8 instrument; and

9 (d) the proper court in the other jurisdiction has  
10 approved the transfer if approval is necessary under the law  
11 of the other jurisdiction.

12 (2) If the court grants the petition under subsection  
13 (1), the court shall require the trustee to give a bond, if  
14 necessary under the law of the other jurisdiction or of this  
15 state, and may require bond as provided in [section 49].

16 NEW SECTION. Section 202. Conditional order accepting  
17 transfer. If appropriate to facilitate transfer of the trust  
18 property or the place of administration of a trust to this  
19 state, the court may issue a conditional order appointing a  
20 trustee to administer the trust in this state and indicating  
21 that transfer to this state will be accepted if transfer is  
22 approved by the proper court of the other jurisdiction.

23 NEW SECTION. Section 203. Administration of  
24 transferred trust. A trust transferred to this state  
25 pursuant to [sections 165 through 203] shall be administered

1 in the same manner as a trust of that type created in this  
2 state.

3 NEW SECTION. Section 204. Personal liability of  
4 trustee to third persons on contracts. (1) Unless otherwise  
5 provided in the contract or in [sections 165 through 203],  
6 a trustee is not personally liable on a contract properly  
7 entered into in the trustee's fiduciary capacity in the  
8 course of administration of the trust unless the trustee  
9 fails to reveal the trustee's representative capacity or  
10 identify the trust in the contract.

11 (2) The personal liability of a trustee on a contract  
12 entered into before October 1, 1989, is governed by prior  
13 law and not by this section.

14 NEW SECTION. Section 205. Personal liability of  
15 trustee arising from ownership or control of trust estate.  
16 A trustee is personally liable for obligations arising from  
17 ownership or control of trust property only if the trustee  
18 is personally at fault.

19 NEW SECTION. Section 206. Personal liability of  
20 trustee for torts. A trustee is personally liable for torts  
21 committed in the course of administration of the trust only  
22 if the trustee is personally at fault.

23 NEW SECTION. Section 207. Liability of dissenting  
24 cotrustee to third persons. (1) A cotrustee who does not  
25 join in exercising a power held by three or more cotrustees

1 is not liable to third persons for the consequences of the  
2 exercise of the power.

3 (2) A dissenting cotrustee who joins in an action at  
4 the direction of the majority cotrustees is not liable to  
5 third persons for the action if the dissenting cotrustee  
6 expresses the dissent in writing to any other cotrustee at  
7 or before the time the action is taken.

8 (3) This section does not excuse a cotrustee from  
9 liability for failure to discharge the cotrustee's duties as  
10 a trustee.

11 NEW SECTION. Section 208. Assertion of claims against  
12 trust. A claim based on a contract entered into by a trustee  
13 in the trustee's representative capacity, on an obligation  
14 arising from ownership or control of trust property, or on a  
15 tort committed in the course of administration of the trust  
16 may be asserted against the trust by proceeding against the  
17 trustee in the trustee's representative capacity, whether or  
18 not the trustee is personally liable on the claim.

19 NEW SECTION. Section 209. Liability as between  
20 trustee and trust estate. The question of liability as  
21 between the trust estate and the trustee personally may be  
22 determined in a proceeding under [section 179].

23 NEW SECTION. Section 210. Protection of third person  
24 dealing with trustee. With respect to a third person dealing  
25 with a trustee or assisting a trustee in the conduct of a

1 transaction, if the third person acts for a valuable  
2 consideration and without actual knowledge that the trustee  
3 is exceeding the trustee's powers or improperly exercising  
4 them:

5 (1) the third person is not bound to inquire whether  
6 the trustee has power to act or is properly exercising a  
7 power and may assume without inquiry the existence of a  
8 trust power and its proper exercise; and

9 (2) the third person is fully protected in dealing  
10 with or assisting the trustee just as if the trustee has and  
11 is properly exercising the power the trustee purports to  
12 exercise.

13 NEW SECTION. Section 211. Application of property  
14 delivered to trustee by third person. A third person is not  
15 bound to ensure the proper application of trust property  
16 paid or delivered to the trustee.

17 NEW SECTION. Section 212. Protection of third person  
18 dealing with former trustee. If a third person acting for a  
19 valuable consideration enters into a transaction with a  
20 former trustee without knowledge that the person is no  
21 longer a trustee, the third person is fully protected just  
22 as if the former trustee were still a trustee.

23 NEW SECTION. Section 213. Effects on real property  
24 transactions. (1) This section relates only to conveyances  
25 of real property to or from a trust, and supplements, but

1 does not modify other substantive provisions of [sections 1  
2 through 215] relating to the creation or validity of trusts.  
3 This section does not affect conveyances recorded prior to  
4 October 1, 1989.

5 (2) Except as otherwise provided in [sections 1  
6 through 215], a conveyance of real property to a trustee  
7 designated as such in the conveyance vests the whole estate  
8 conveyed in the trustee, subject only to the trustee's  
9 duties. The beneficiaries of the trust take no estate or  
10 interest in the real property, but may determine or enforce  
11 the terms of the trust as provided in [sections 1 through  
12 215].

13 (3) An instrument creating or amending a trust need  
14 not be recorded, but may be if properly acknowledged.

15 (4) If there is no clear reference to or designation  
16 of a grantee as trustee in a conveyance (nor in a separately  
17 recorded instrument recorded in the same county as the  
18 conveyance and describing the same property as described in  
19 the conveyance), the conveyance shall be considered to be  
20 absolute to the grantee, in favor of purchasers or  
21 encumbrancers from the grantee, who were without actual  
22 knowledge and who acted for a valuable consideration,  
23 despite any valid trust which may exist.

24 (5) Unless limitations upon a trustee's power or  
25 authority are set forth in the recorded conveyance of real

1 property to the trustee or in a separate trust instrument  
2 (or portion thereof, or abstract thereof) recorded in the  
3 same county, there are no limitations upon the trustee's  
4 power or authority to convey or encumber the real property  
5 in favor of third persons who were without actual knowledge  
6 and who acted for a valuable consideration. A separate trust  
7 instrument incorporated by reference in a conveyance to a  
8 trustee cannot limit the trustee's power or authority to  
9 convey or encumber unless the limitations are set forth in  
10 the trust instrument (or portion thereof or abstract  
11 thereof) which is also recorded in the county where the real  
12 property is located. An amendment to a recorded trust  
13 instrument may not affect the power or authority of a  
14 trustee to convey or encumber unless it is also recorded in  
15 the same place.

16 (6) A subsequent conveyance from a person designated  
17 in the original conveyance as trustee (or from his successor  
18 trustee) conveys the whole estate vested in the trustee,  
19 except as limited by the terms of the conveyance. The  
20 identity of any successor trustee may be established by a  
21 recorded affidavit of the successor trustee specifying his  
22 name and address and the date and circumstances of his  
23 succession, and confirming that he is currently lawfully  
24 serving in such capacity.

25 (7) In an action or proceeding by a third person

involving the real property granted to a trustee, the person designated as trustee in the original conveyance, or the successor trustee as established in subsection (6), or, if none, the person then actually serving as trustee, or, if none, any beneficiary designated by the court to represent the interests of the beneficiaries, shall be considered the only necessary representative of the trust and of all persons with an interest therein. A judgment is binding upon and conclusive against the trust and all persons interested therein as to all matters finally adjudicated in the judgment.

**NEW SECTION. Section 214.** Creditor's rights against revocable trust during trustor's lifetime. If the trustor retains the power to revoke the trust in whole or in part, the trust property is subject to the claims of creditors of the trustor to the extent of the power of revocation during the lifetime of the trustor.

**NEW SECTION. Section 215.** Creditor's rights against revocable trust after trustor's death. Upon the death of a trustor who had retained the power to revoke the trust in whole or in part, the property that was subject to the power of revocation at the time of the trustor's death is subject to the claims of creditors of the decedent trustor's estate and to the expenses of administration of the estate to the extent that the decedent trustor's estate is inadequate to

satisfy those claims and expenses.

**Section 216.** Section 2-2-103, MCA, is amended to read:

**"2-2-103. Public trust.** (1) The holding of public office or employment is a public trust, created by the confidence which the electorate reposes in the integrity of public officers, legislators, and employees. A public officer, legislator, or employee shall carry out his duties for the benefit of the people of the state.

(2) A public officer, legislator, or employee whose conduct departs from his fiduciary duty is liable to the people of the state as a trustee of property, is liable to a beneficiary under ~~72-20-203(2)~~ [section 77], and shall suffer such other liabilities as a private fiduciary would suffer for abuse of his trust. The county attorney of the county where the trust is violated may bring appropriate judicial proceedings on behalf of the people. Any moneys collected in such actions shall be paid to the general fund of the aggrieved agency.

(3) The following sections set forth various rules of conduct, the transgression of any of which is, as such, a violation of fiduciary duty, and various ethical principles, the transgression of any of which is not, as such, a violation of fiduciary duty."

**Section 217.** Section 31-2-209, MCA, is amended to read:

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

(1) if it gives a preference dependent upon any condition or contingency or with any power of revocation reserved;

(2) if it tends to coerce any creditor to release or compromise his demand;

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

(4) if it reserves any interest in the assigned property or in any part thereof to the assignor or for his benefit, before all existing debts are paid;

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

(6) if it exempts him from liability for neglect of duty or misconduct;

(7) if it violates ~~72-20-203(1)~~ [section 77]."

**Section 218.** Section 70-20-101, MCA, is amended to read:

"70-20-101. Transfer to be in writing -- statute of

frauds. No estate or interest in real property, other than an estate at will or for a term not exceeding 1 year, ~~or any trust--over-or-power-concerning-it-or-in-any-manner-relating~~ thereto can be created, granted, assigned, surrendered, or declared otherwise than by operation of law or a conveyance or other instrument in writing, subscribed by the party creating, granting, assigning, surrendering, or declaring it or by his lawful agent thereunto authorized by writing."

**Section 219.** Section 82-1-304, MCA, is amended to read:

**"82-1-304. Administration of the trust.** (1) The administration of the trust shall comply with the appropriate provisions regulating trusts contained in Title 72.

(2) No trustee or attorney fees may be paid from the trust proceeds.

(3) All bonuses, rental payments, royalties, and other income shall be paid to the trustee until the trust is terminated and notice of its termination given to all interested parties. The trustee shall distribute all money held in the trust to the person or persons entitled to it upon the order of the district court.

(4) A trust in favor of unlocatable owners shall be in force until the unlocatable owners of the mineral interest in question have successfully claimed the share of funds



1 held in trust and filed the notice provided in 82-1-306.

2 (5) The trustee shall invest funds under his  
3 management in the manner of a prudent man, as defined in  
4 ~~72-21-104~~ provided in [section 89]. Fifty percent of the  
5 interest earned on each trust shall be credited to the  
6 general fund of the county in which the mineral interest is  
7 located to defray the costs of administration.

8 (6) Funds held in the trusts are subject to the  
9 provisions governing abandoned property contained in Title  
10 70, chapter 9."

11 NEW SECTION. **Section 220.** Repealer. Sections  
12 72-12-101 through 72-12-103, Title 72, chapters 20 through  
13 25, sections 72-27-101 and 72-27-102, MCA, are repealed.

14 NEW SECTION. **Section 221.** Codification instruction.  
15 [Sections 1 through 215] are intended to be codified as an  
16 integral part of Title 72 and the provisions of Title 72  
17 apply to [sections 1 through 215].

-End-

APPROVED BY COMMITTEE  
ON JUDICIARY

## SENATE BILL NO. 333

INTRODUCED BY MAZUREK, CRIPPEN, BISHOP

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE LAWS RELATING TO TRUSTS AND TRUSTEES; AMENDING SECTIONS 2-2-103, 31-2-209, 70-20-101, AND 82-1-304, MCA; AND REPEALING SECTIONS 72-12-101 THROUGH 72-12-103, TITLE 72, CHAPTERS 20 THROUGH 25, AND SECTIONS 72-27-101 AND 72-27-102, MCA."

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

NEW SECTION. Section 1. Short title. [Sections 1 through 215] shall be known and may be cited as the "Trust Code".

NEW SECTION. Section 2. General rule concerning application of trust code. Except as otherwise provided by statute:

(1) After September 30, 1989, [sections 1 through 215] apply to all trusts regardless of when they were created, unless in the opinion of the court, application of a particular provision of [sections 1 through 215] would substantially interfere with the rights of the parties and other interested persons, in which case the particular provision of [sections 1 through 215] does not apply and prior law applies.

(2) After September 30, 1989, [sections 1 through 215] apply to all proceedings concerning trusts whenever commenced, unless in the opinion of the court, application of a particular provision of [sections 1 through 215] would substantially interfere with the effective conduct of the proceedings or the rights of the parties and other interested persons, in which case the particular provision of [sections 1 through 215] does not apply and prior law applies.

NEW SECTION. Section 3. Common law as law of state. Except to the extent that the common law rules governing trusts are modified by statute, the common law as to trusts is the law of this state.

NEW SECTION. Section 4. Constructive and resulting trusts not affected. Other than [sections 19 through 23], nothing in [sections 1 through 215] affects the law relating to constructive or resulting trusts.

NEW SECTION. Section 5. Application of code to charitable trusts. Unless otherwise provided by statute, [sections 1 through 215] apply to charitable trusts that are subject to the jurisdiction of the attorney general.

NEW SECTION. Section 6. Laws affecting construction and operation of wills apply to trusts. (1) Title 72, chapter 2, part 5 and 72-3-901 apply to the construction and operation of trusts, except as provided in subsection (2).

(2) This section does not apply to any trust if its terms expressly or by necessary implication make this section inapplicable to it.

(3) For purposes of [sections 1 through 215], references in Title 72, chapter 2, part 5 and in 72-3-901 to a "testator" refer to the trustor, references to a "will" refer to a trust, references to a "devisee" refer to a trust beneficiary, and references to a "devise" refer to a trust distribution.

**NEW SECTION. Section 7. Definitions.** As used in [sections 1 through 215] unless the context requires otherwise the following definitions apply:

(1) "Beneficiary" means a person who has any present or future interest, vested or contingent, and also includes the owner of an interest by assignment or other transfer and, as it relates to a charitable trust, includes any person entitled to enforce the trust.

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

(3) "Property" includes both real and personal property or any interest therein and means anything that may be the subject of ownership.

(4) "Trust" when not qualified by the word "resulting" or "constructive", includes any express trust, private or charitable, with additions thereto, wherever and however

created. It also includes a trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust. The term does not include conservatorships, personal representatives, custodial arrangements pursuant to chapter 26 of this title, business trusts providing for certificates to be issued to beneficiaries, common trust funds, voting trusts, security arrangements, liquidation trusts, and trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind and any arrangement under which a person is nominee or escrowee for another.

(5) "Trustee" means the person holding property in trust. The term includes an original, additional, or successor trustee, whether or not appointed or confirmed by a court.

(6) "Trustor" means the person who creates a trust.

(7) "Trust company" means an entity which has qualified to engage in and conduct a trust business in this state.

(8) "Trust property" means the property held in trust.

**NEW SECTION. Section 8. Reference to statutes -- amendments and additions.** Whenever a reference is made to any portion of [sections 1 through 215] or to any other law, the reference applies to all amendments and additions made.

**NEW SECTION. Section 9. Methods of creating trust.**

Subject to other provisions of [sections 1 through 72], a trust may be created by any of the following methods:

(1) a declaration by the owner of property that the owner holds the property as trustee;

(2) a transfer of property by the owner during the owner's lifetime to another person as trustee;

(3) a testamentary transfer of property by the owner to another person as trustee;

(4) an exercise of a power of appointment to another person as trustee; or

(5) an enforceable promise to create a trust.

**NEW SECTION. Section 10. Intention to create trust.**

A trust is created only if the trustor properly manifests an intention to create a trust.

**NEW SECTION. Section 11. Trust property.** (1) A trust is created only if there is trust property.

(2) The requirement of subsection (1) may be satisfied if the trust (or its trustee) is designated to be beneficiary of the proceeds of an insurance contract, an annuity contract, an employee benefit plan, an individual retirement account, or similar device, even though the designation may be revoked.

**NEW SECTION. Section 12. Trust purpose.** A trust may be created for any purpose that is not illegal or against

public policy.

**NEW SECTION. Section 13. Trust for indefinite or general purposes.** A trust created for an indefinite or general purpose is not invalid for that reason if it can be determined with reasonable certainty that a particular use of the trust property comes within that purpose.

**NEW SECTION. Section 14. Designation of beneficiary.**

(1) A trust, other than a charitable trust, is created only if there is a beneficiary.

(2) The requirement of subsection (1) is satisfied if the trust instrument provides for either of the following:

(a) a beneficiary or class of beneficiaries that is ascertainable with reasonable certainty or that is sufficiently described so it can be determined that some person meets the description or is within the class; or

(b) a grant of power to the trustee or some other person to select the beneficiaries based on a standard or in the discretion of the trustee or other person.

**NEW SECTION. Section 15. Designation of trust or trustee as beneficiary.** (1) A trust or trustee may be designated as the beneficiary of the proceeds of an insurance contract, an annuity contract, an employee benefit plan, an individual retirement account, or similar device if the designation is made in accordance with the contract, plan, account, or device.

(2) Subsection (1) applies even though the trust or trustee is named or to be named by will or trust and whether or not the will or trust is in existence at the time of the designation.

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

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

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

(3) by operation of law.

**NEW SECTION. Section 17. Consideration.** Consideration is not required to create a trust, but a promise to create a trust in the future is enforceable only if the requirements for an enforceable contract are satisfied.

**NEW SECTION. Section 18. Exception to doctrine of merger.** If a trust provides for one or more successor beneficiaries after the death of the trustor, the trust is not invalid, merged, or terminated in either of the following circumstances:

(1) where there is one trustor who is the sole trustee and the sole beneficiary during the trustor's lifetime; or

(2) where there are two or more trustors, one or more of whom are trustees, and the beneficial interest in the

trust is in one or more of the trustors during the lifetime of the trustors.

**NEW SECTION. Section 19. Resulting trust upon failure of trust.** Where the owner of property gratuitously transfers it and manifests in the trust instrument an intention that the transferee should hold the property in trust but the trust fails, the transferee holds the trust estate as a resulting trust for the transferor or his estate, unless:

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

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

**NEW SECTION. Section 20. Resulting trust upon full performance of trust.** Where the owner of property gratuitously transfers it subject to a trust which is properly declared and which is fully performed without exhausting the trust estate, the trustee holds the surplus as a resulting trust for the transferor or his estate, unless the transferor manifested in the trust instrument an intention that no resulting trust of the surplus should arise.

**NEW SECTION. Section 21. Purchase money resulting trust.** (1) Where a transfer of property is made to one

1 person and the purchase price is paid by another, a  
2 resulting trust arises in favor of the person who paid the  
3 purchase price.

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

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

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

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

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

20 NEW SECTION. Section 22. Constructive trust. A  
21 constructive trust arises when a person holding title to  
22 property is subject to an equitable duty to convey it to  
23 another on the ground that the person holding title would be  
24 unjustly enriched if he were permitted to retain it.

25 NEW SECTION. Section 23. Resulting trusts,

1 constructive trusts -- statute of frauds. Resulting trusts  
2 and constructive trusts are considered to arise by operation  
3 of law and are valid under [section 16(3)].

4 NEW SECTION. Section 24. Restraint on transfer of  
5 income. Except as provided in [section 28], if the trust  
6 instrument provides that a beneficiary's interest is not  
7 subject to voluntary or involuntary transfer, the  
8 beneficiary's interest in income under the trust may not be  
9 transferred and is not subject to enforcement of a money  
10 judgment until paid to the beneficiary.

11 NEW SECTION. Section 25. Restraint on transfer of  
12 principal. (1) Except as provided in subsection (2) and in  
13 [section 28], if the trust instrument provides that a  
14 beneficiary's interest in principal is not subject to  
15 voluntary or involuntary transfer, the beneficiary's  
16 interest in principal may not be transferred and is not  
17 subject to enforcement of a money judgment until paid to the  
18 beneficiary.

19 (2) After an amount of principal has become due and  
20 payable to the beneficiary under the trust instrument, upon  
21 petition to the court by a judgment creditor, the court may  
22 make an order directing the trustee to satisfy the money  
23 judgment out of that principal amount. The court in its  
24 discretion may issue an order directing the trustee to  
25 satisfy all or part of the judgment out of that principal

1 amount.

2 NEW SECTION. Section 26. Trust for support. Except as  
3 provided in [section 28], if the trust instrument provides  
4 that the trustee shall pay income or principal or both for  
5 the education or support of a beneficiary, the beneficiary's  
6 interest in income or principal or both under the trust may  
7 not be transferred and is not subject to the enforcement of  
8 a money judgment until paid to the beneficiary.

9 NEW SECTION. Section 27. Transferee or creditor  
10 cannot compel trustee to exercise discretion -- liability of  
11 trustee for payment to or for beneficiary. (1) If the trust  
12 instrument provides that the trustee shall pay to or for the  
13 benefit of a beneficiary so much of the income or principal  
14 or both as the trustee in the trustee's discretion sees fit  
15 to pay, a transferee or creditor of the beneficiary may not  
16 compel the trustee to pay any amount that may be paid only  
17 in the exercise of the trustee's discretion.

18 (2) If the trustee has knowledge of the transfer of  
19 the beneficiary's interest or has been served with process  
20 by a judgment creditor seeking to reach the beneficiary's  
21 interest, and the trustee pays to or for the benefit of the  
22 beneficiary any part of the income or principal that may be  
23 paid only in the exercise of the trustee's discretion, the  
24 trustee is liable to the transferee or creditor to the  
25 extent that the payment to or for the benefit of the

1 beneficiary impairs the right of the transferee or creditor.  
2 This subsection does not apply if the beneficiary's interest  
3 in the trust is subject to a restraint on transfer that is  
4 valid under [section 24 or 25].

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

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

12 NEW SECTION. Section 28. Where trustor is  
13 beneficiary. (1) If the trustor is a beneficiary of a trust  
14 created by the trustor and the trustor's interest is subject  
15 to a provision restraining the voluntary or involuntary  
16 transfer of the trustor's interest, the restraint is invalid  
17 against transferees or creditors of the trustor. The  
18 invalidity of the restraint on transfer does not affect the  
19 validity of the trust.

20 (2) If the trustor is the beneficiary of a trust  
21 created by the trustor and the trust instrument provides  
22 that the trustee shall pay income or principal or both for  
23 the education or support of the beneficiary or gives the  
24 trustee the discretion to determine the amount of income or  
25 principal or both to be paid to or for the benefit of the

1 trustor, a transferee or creditor of the trustor may reach  
2 the maximum amount that the trustee could pay to or for the  
3 benefit of the trustor under the trust instrument, not  
4 exceeding the amount of the trustor's proportionate  
5 contribution to the trust.

6 **NEW SECTION. Section 29. Disclaimer not a transfer.**

7 A disclaimer or renunciation by a beneficiary of all or part  
8 of his interest under a trust shall not be considered a  
9 transfer under [section 24 or 25].

10 **NEW SECTION. Section 30. Presumption of revocability.**

11 Unless a trust is expressly made irrevocable by the trust  
12 instrument, the trust is revocable by the trustor. This  
13 section applies only where the trustor is domiciled in this  
14 state when the trust is created, where the trust instrument  
15 is executed in this state, or where the trust instrument  
16 provides that the law of this state governs the trust.

17 **NEW SECTION. Section 31. Method of revocation by**

18 trustor. (1) A trust that is revocable by the trustor may be  
19 revoked in whole or in part by any of the following methods:

20 (a) by compliance with any method of revocation  
21 provided in the trust instrument; or

22 (b) by a writing (other than a will) signed by the  
23 trustor and delivered to the trustee during the lifetime of  
24 the trustor. If the trust instrument explicitly makes the  
25 method of revocation provided in the trust instrument the

1 exclusive method of revocation, the trust may not be revoked  
2 pursuant to this subsection.

3 (2) A trust may not be revoked by an attorney-in-fact  
4 under a power of attorney unless it is expressly permitted  
5 by the trust instrument.

6 (3) Nothing in this section limits the authority to  
7 modify or terminate a trust pursuant to [section 33 or 34]  
8 in an appropriate case.

9 (4) The manner of revocation of a trust revocable by  
10 the trustor that was created by an instrument executed  
11 before October 1, 1989, is governed by prior law and not by  
12 this section.

13 **NEW SECTION. Section 32. Power to revoke includes**

14 power to modify. Unless the trust instrument provides  
15 otherwise, if a trust is revocable by the trustor, the  
16 trustor may modify the trust by the procedure for  
17 revocation.

18 **NEW SECTION. Section 33. Modification or termination**

19 of irrevocable trust by all beneficiaries. (1) Except as  
20 provided in subsection (2), if all beneficiaries of an  
21 irrevocable trust consent, they may compel modification or  
22 termination of the trust upon petition to the court.

23 (2) If the continuance of the trust is necessary to  
24 carry out a material purpose of the trust, the trust cannot  
25 be modified or terminated unless the court, in its



1 discretion, determines that the reason for doing so under  
2 the circumstances outweighs the interest in accomplishing a  
3 material purpose of the trust. Under this section the court  
4 does not have discretion to permit termination of a trust  
5 that is subject to a valid restraint on transfer of the  
6 beneficiary's interest as provided in [sections 24 through  
7 29].

8 NEW SECTION. Section 34. Modification or termination  
9 by trustor and all beneficiaries. (1) If the trustor and all  
10 beneficiaries of a trust consent, they may compel the  
11 modification or termination of the trust.

12 (2) If any beneficiary does not consent to the  
13 modification or termination of the trust, upon petition to  
14 the court, the other beneficiaries, with the consent of the  
15 trustor, may compel a modification or a partial termination  
16 of the trust if the interests of the beneficiaries who do  
17 not consent are not substantially impaired.

18 (3) If the trust provides for the disposition of  
19 principal to a class of persons described only as "heirs" or  
20 "next of kin" of the trustor, or using other words that  
21 describe the class of all persons who would take under the  
22 rules of intestacy, the court may limit the class of  
23 beneficiaries whose consent is needed to compel the  
24 modification or termination of the trust to the  
25 beneficiaries who are reasonably likely to take under the

1 circumstances.

2 NEW SECTION. Section 35. Guardian ad litem. For the  
3 purposes of [sections 33 and 34], the consent of a  
4 beneficiary who is legally incapacitated, unascertained, or  
5 unborn may be given in proceedings before the court by a  
6 guardian ad litem, if it would be appropriate to do so. In  
7 this case the guardian ad litem may rely on general family  
8 benefit accruing to living members of the beneficiary's  
9 family as a basis for approving a modification or  
10 termination of the trust.

11 NEW SECTION. Section 36. No conclusive presumption of  
12 fertility. In determining the class of beneficiaries whose  
13 consent is necessary to modify or terminate a trust pursuant  
14 to [section 33 or 34], the presumption of fertility is  
15 rebuttable.

16 NEW SECTION. Section 37. Termination of trusts --  
17 trustee's powers on termination. (1) A trust terminates when  
18 any of the following occurs:

- 19 (a) the term of the trust expires;  
20 (b) the trust purpose is fulfilled;  
21 (c) the trust purpose becomes unlawful;  
22 (d) the trust purpose becomes impossible to fulfill;  
23 or  
24 (e) the trust is revoked.  
25 (2) On termination of the trust, the trustee continues

to have the powers reasonably necessary under the circumstances to wind up the affairs of the trust.

**NEW SECTION. Section 38. Trust with uneconomically low principal.** (1) On petition by a trustee or beneficiary, if the court determines that the fair market value of the principal of a trust has become so low in relation to the cost of administration that continuation of the trust under its existing terms will defeat or substantially impair the accomplishment of its purposes, the court may, in its discretion and in a manner that conforms as nearly as possible to the intention of the trustor, order any of the following:

- (a) termination of the trust;
- (b) modification of the trust; or
- (c) appointment of a new trustee.

(2) Notwithstanding subsection (1), if the trust principal does not exceed \$20,000 in value, the trustee has the power to terminate the trust.

(3) The existence of a trust provision restraining transfer of the beneficiary's interest does not prevent application of this section.

**NEW SECTION. Section 39. Modification or termination.**

(1) On petition by a trustee or beneficiary, the court may modify the administrative or dispositive provisions of the trust or terminate the trust if the continuation of the

trust under its terms would defeat or substantially impair the accomplishment of the purposes of the trust, whether by the imposition of tax, the allocation of beneficial interest inconsistent with such purposes, or by other reason. In this case, if necessary to carry out the purposes of the trust, the court may order the trustee to do acts that are not authorized or are forbidden by the trust instrument.

(2) The court shall consider a trust provision restraining transfer of the beneficiary's interest as a factor in making its decision whether to modify or terminate the trust, but the court is not precluded from exercising its discretion to modify or terminate the trust solely because of a restraint on transfer.

**NEW SECTION. Section 40. Disposition of property upon termination.** At the termination of a trust, the trust property shall be disposed of as follows:

(1) In the case of a trust that is revoked by the trustor, as directed by the trustor.

(2) In the case of a trust that is terminated by the consent of the trustor and all beneficiaries, as agreed by the trustor and all beneficiaries.

(3) In any other case, as provided in the trust instrument or in a manner directed by the court that conforms as nearly as possible to the intention of the trustor as expressed in the trust instrument. If a trust is

1 terminated by the trustee pursuant to [section 38(2)], the  
2 trust property shall be distributed as determined by the  
3 trustee pursuant to this subsection.

4 NEW SECTION. Section 41. Combination of similar  
5 trusts. If the terms of two or more trusts are substantially  
6 similar, on petition by a trustee or beneficiary, the court,  
7 for good cause shown, may combine the trusts if the court  
8 determines that administration as a single trust will not  
9 defeat or substantially impair the accomplishment of the  
10 trust purposes or the interests of the beneficiaries.

11 NEW SECTION. Section 42. Division of trusts. On  
12 petition by a trustee or beneficiary, the court, for good  
13 cause shown, may divide a trust into two or more separate  
14 trusts, if the court determines that dividing the trust will  
15 not defeat or substantially impair the accomplishment of the  
16 trust purposes or the interests of the beneficiaries.

17 NEW SECTION. Section 43. Charitable trust. A  
18 charitable trust, or the charitable portion of a trust,  
19 subjects the trustee to equitable duties to deal with the  
20 trust property for a charitable purpose.

21 NEW SECTION. Section 44. Charitable purposes.  
22 Charitable purposes include:

- 23 (1) the relief of poverty;  
24 (2) the advancement of education;  
25 (3) the advancement of religion;

- 1 (4) the promotion of health;  
2 (5) governmental or municipal purposes; or  
3 (6) other purposes the accomplishment of which are  
4 beneficial to the community.

5 NEW SECTION. Section 45. Enforcement of a charitable  
6 trust. The attorney general, a cotrustee, or a person who  
7 has a special interest in the enforcement of the charitable  
8 trust can maintain a suit for the enforcement of a  
9 charitable trust, but not persons who have no special  
10 interest or the trustor or his heirs or personal  
11 representative.

12 NEW SECTION. Section 46. Cy pres doctrine. If  
13 property is given in trust to be applied to a particular  
14 charitable purpose, and it is or becomes impossible,  
15 impracticable, or illegal to carry out the particular  
16 purpose, and if the trustor manifested a general intention  
17 to devote the property to charitable purposes, the trust  
18 need not fail. The court may direct the application of the  
19 property to some charitable purpose which falls within the  
20 general charitable intention of the trustor.

21 NEW SECTION. Section 47. Acceptance of trust by  
22 trustee. (1) The person named as trustee may accept the  
23 trust, or a modification of the trust, by one of the  
24 following methods:

- 25 (a) signing the trust instrument or the trust

1 instrument as modified, or signing a separate written  
2 acceptance; or

3 (b) knowingly exercising powers or performing duties  
4 under the trust instrument or the trust instrument as  
5 modified, except as provided in subsection (2).

6 (2) In a case where there is an immediate risk of  
7 damage to the trust property, the person named as trustee  
8 may act to preserve the trust property without accepting the  
9 trust or a modification of the trust, if within reasonable  
10 time after acting the person delivers a written rejection of  
11 the trust or the modification of the trust to the trustor  
12 or, if the trustor is dead or incompetent, to a beneficiary.  
13 This subsection does not impose a duty on the person named  
14 as trustee to act.

15 NEW SECTION. Section 48. Rejection of trust --  
16 nonliability of person who rejects trust. (1) A person named  
17 as trustee may in writing reject the trust or a modification  
18 of the trust.

19 (2) If the person named as trustee does not accept the  
20 trust or a modification of the trust by a method provided in  
21 [section 47(1)] within a reasonable time after learning of  
22 being named as trustee or of the modification, the person  
23 has rejected the trust or the modification.

24 (3) A person named as trustee who rejects the trust or  
25 a modification of the trust is not liable with respect to

1 the rejected trust or modification.

2 NEW SECTION. Section 49. Trustee's bond. (1) A  
3 trustee is not required to give a bond to secure performance  
4 of the trustee's duties, unless either of the following  
5 circumstances occur OCCURS:

6 (a) A bond is required by the trust instrument.

7 (b) Notwithstanding a waiver of bond in the trust  
8 instrument, a bond is found by the court to be necessary to  
9 protect the interests of beneficiaries.

10 (2) Notwithstanding subsection (1)(a), the court may  
11 excuse a requirement of a bond, reduce or increase the  
12 amount of a bond, release a surety, permit the substitution  
13 of another bond with the same or different sureties, or  
14 accept another form of security.

15 (3) If a bond is required, it shall be filed or  
16 served, in the amount, and with sureties and liabilities as  
17 provided in the trust instrument or as ordered by the court.

18 (4) Except as otherwise provided in the trust  
19 instrument or ordered by the court, the cost of the bond  
20 shall be charged against the trust.

21 (5) A trust company may not be required to give a  
22 bond, notwithstanding a contrary provision in the trust  
23 instrument.

24 NEW SECTION. Section 50. Certificate of trustee. On  
25 application by the trustee, the clerk of the district court

1 shall issue a certificate that the trustee is a duly  
2 appointed and acting trustee under the trust if the court  
3 file shows the incumbency of the trustee.

4 NEW SECTION. Section 51. Cotrustees. (1) Unless  
5 otherwise provided in the trust instrument, a power vested  
6 in two trustees may only be exercised by their unanimous  
7 action.

8 (2) Unless otherwise provided in the trust instrument,  
9 a power vested in three or more trustees may be exercised by  
10 a majority of such trustees.

11 NEW SECTION. Section 52. Vacancy in office of  
12 cotrustee. Unless otherwise provided in the trust  
13 instrument, if a vacancy occurs in the office of a  
14 cotrustee, the remaining cotrustee or cotrustees may act for  
15 the trust as if they are the only trustees.

16 NEW SECTION. Section 53. Temporary incapacity of  
17 cotrustee. Unless otherwise provided in the trust  
18 instrument, if a cotrustee is unavailable to perform the  
19 duties of the cotrustee because of absence, illness, or  
20 other temporary incapacity, the remaining cotrustee or  
21 cotrustees may act for the trust when necessary to  
22 accomplish the purposes of the trust or to avoid irreparable  
23 injury to the trust property as if they are the only  
24 trustees.

25 NEW SECTION. Section 54. Resignation of the trustee.

1 (1) A trustee who has accepted the trust may resign only by  
2 one of the following methods:

3 (a) as provided in the trust instrument;

4 (b) in the case of a revocable trust, with the consent  
5 of the person holding the power to revoke the trust;

6 (c) in the case of a trust that is not revocable, with  
7 the consent of only all of the adult beneficiaries who are  
8 receiving or are entitled to receive income under the trust  
9 or to receive a distribution of principal if the trust were  
10 terminated at the time consent is sought; or

11 (d) pursuant to a court order obtained as provided in  
12 subsection (2).

13 (2) On petition by the trustee, the court shall accept  
14 the trustee's resignation. The court may also make any  
15 orders necessary for the preservation of the trust property,  
16 including the appointment of a receiver or a temporary  
17 trustee.

18 NEW SECTION. Section 55. Liability upon resignation.  
19 The liability for acts or omissions of a resigning trustee  
20 or of the sureties on the trustee's bond, if any, is not  
21 released or affected in any manner by the trustee's  
22 resignation.

23 NEW SECTION. Section 56. Removal of a trustee. (1) A  
24 trustee may be removed in accordance with the trust  
25 instrument or by the court on its own motion or on petition

1 of a cotrustee or beneficiary.

2 (2) The grounds for removal of a trustee by the court  
3 include the following:

4 (a) if the trustee has committed a breach of the  
5 trust;

6 (b) if the trustee is insolvent or otherwise unfit to  
7 administer the trust;

8 (c) if hostility or lack of cooperation among  
9 cotrustees impairs the administration of the trust;

10 (d) if the trustee fails or declines to act; or

11 (e) for other good cause.

12 (3) If it appears to the court that trust property or  
13 the interests of a beneficiary may suffer loss or injury  
14 pending a decision on a petition for removal of a trustee  
15 and any appellate review, the court may, on its own motion  
16 or on petition of a cotrustee or beneficiary, compel the  
17 trustee whose removal is sought to surrender trust property  
18 to a cotrustee or to a receiver or temporary trustee. The  
19 court may also suspend the powers of the trustee to the  
20 extent the court considers necessary.

21 NEW SECTION. Section 57. Vacancy in office of  
22 trustee. There is a vacancy in the office of trustee in any  
23 of the following circumstances:

24 (1) The person named as trustee rejects the trust.

25 (2) The person named as trustee cannot be identified

1 or does not exist.

2 (3) The trustee resigns or is removed.

3 (4) The trustee dies.

4 (5) A conservator or guardian of an individual trustee  
5 is appointed.

6 (6) A certificate of incorporation of a trust company  
7 is revoked or its powers are suspended, if the revocation or  
8 suspension is to be in effect for a period of 30 days or  
9 more.

10 (7) A receiver is appointed for a trust company if the  
11 appointment is not vacated within a period of 30 days.

12 NEW SECTION. Section 58. Delivery of property by  
13 former trustee upon occurrence of vacancy. When a vacancy  
14 has occurred in the office of trustee, the former trustee  
15 who holds property of the trust shall deliver the trust  
16 property to the successor trustee or a person appointed by  
17 the court to receive the property and remains responsible  
18 for the trust property until it is delivered. A trustee who  
19 has resigned or is removed has the powers reasonably  
20 necessary under the circumstances to preserve the trust  
21 property until it is delivered to the successor trustee and  
22 to perform actions necessary to complete the resigning or  
23 removed trustee's administration of the trust.

24 NEW SECTION. Section 59. Appointment of trustee to  
25 fill vacancy. (1) If the trust has no trustee or if the

1 trust instrument requires a vacancy in the office of a  
2 cotrustee to be filled, the vacancy shall be filled as  
3 provided in this section.

4 (2) If the trust instrument provides a practical  
5 method of appointing a trustee or names the person to fill  
6 the vacancy, the vacancy shall be filled as provided in the  
7 trust instrument.

8 (3) If the vacancy in the office of trustee is not  
9 filled as provided in subsection (2), on petition of a  
10 cotrustee or beneficiary the court may, in its discretion,  
11 appoint a trustee to fill the vacancy. If the trust provides  
12 for more than one trustee, the court may, in its discretion,  
13 appoint the original number or any lesser number of  
14 trustees. In selecting a trustee, the court shall give  
15 consideration to the wishes of the beneficiaries who are 14  
16 years of age or older.

17 **NEW SECTION. Section 60. Capacity of trustee.** (1) The  
18 trustee must have the legal capacity to take, hold, and  
19 transfer the trust property. The trustee may be a natural  
20 person or a corporation or trust company. If the trustee is  
21 a corporation, it must be qualified to act as a trustee in  
22 this state.

23 (2) A beneficiary of a trust may be the trustee of the  
24 trust.

25 (3) The trustor of a trust may be the trustee of the

1 trust.

2 **NEW SECTION. Section 61. Trustee's compensation as**  
3 **provided in trust instrument -- different compensation.** (1)  
4 Subject to subsection (2), if the trust instrument provides  
5 for the trustee's compensation, the trustee is entitled to  
6 be compensated in accordance with the trust instrument.

7 (2) Upon proper showing, the court may fix or allow  
8 greater or lesser compensation than could be allowed under  
9 the terms of the trust in any of the following  
10 circumstances:

11 (a) whenever the duties of the trustee are  
12 substantially different from those contemplated when the  
13 trust was created;

14 (b) whenever the compensation in accordance with the  
15 terms of the trust would be inequitable or unreasonably low  
16 or high; or

17 (c) in extraordinary circumstances calling for  
18 equitable relief.

19 (3) An order fixing or allowing greater or lesser  
20 compensation under subsection (2) applies only prospectively  
21 to actions taken in administration of the trust after the  
22 order is made.

23 **NEW SECTION. Section 62. Trustee's compensation where**  
24 **trust silent.** If the trust instrument does not specify the  
25 trustee's compensation, the trustee is entitled to

1 reasonable compensation.

2 NEW SECTION. Section 63. Compensation for services  
3 rendered in making temporary investments. In addition to  
4 other compensation to which the trustee is entitled, the  
5 trustee is entitled to make a reasonable charge for services  
6 rendered in making temporary investments.

7 NEW SECTION. Section 64. Court determination of  
8 prospective compensation. The court may fix an amount of  
9 periodic compensation under [sections 61 and 62] to continue  
10 for as long as the court determines is proper.

11 NEW SECTION. Section 65. Compensation of cotrustees.  
12 Unless the trust instrument otherwise provides or the  
13 trustees otherwise agree, if the trust has two or more  
14 trustees, the compensation shall be apportioned among the  
15 cotrustees according to the services rendered by them.

16 NEW SECTION. Section 66. Repayment of trustee for  
17 expenditures. A trustee is entitled to the repayment out of  
18 the trust property for the following:

19 (1) expenditures that were properly incurred in the  
20 administration of the trust; and

21 (2) to the extent that they benefited the trust,  
22 expenditures that were not properly incurred in the  
23 administration of the trust.

24 NEW SECTION. Section 67. Trustee's lien. The trustee  
25 has an equitable lien on the trust property as against the

1 beneficiary in the amount of advances, with any interest,  
2 made for the protection of the trust, and for expenses,  
3 losses, and liabilities sustained in the administration of  
4 the trust or because of ownership or control of any trust  
5 property.

6 NEW SECTION. Section 68. Limits on rights of  
7 beneficiary of revocable trust. Except to the extent that  
8 the trust instrument otherwise provides or where the joint  
9 action of the trustor and all beneficiaries is required,  
10 during the time that a trust is revocable and the person  
11 holding the power to revoke the trust is competent:

12 (1) The person holding the power to revoke, and not  
13 the beneficiary, has the rights afforded beneficiaries under  
14 [sections 1 through 215].

15 (2) The duties of the trustee are owed to the person  
16 holding the power to revoke.

17 NEW SECTION. Section 69. Consent by beneficiary of  
18 revocable trust. (1) In any case where the consent of a  
19 beneficiary may be given or is required to be given before  
20 an action may be taken, during the time that a trust is  
21 revocable and the person holding the power to revoke the  
22 trust is competent, the person holding the power to revoke,  
23 and not the beneficiary, has the power to consent or  
24 withhold consent.

25 (2) This section does not apply where the joint



1 consent of the trustor and all beneficiaries is required by  
2 statute.

3 NEW SECTION. Section 70. Notice to beneficiary of  
4 revocable trust. Notwithstanding any other statute, during  
5 the time that a trust is revocable and the person holding  
6 the power to revoke the trust is competent, a notice that is  
7 to be given to a beneficiary shall be given to the person  
8 holding the power to revoke and not to the beneficiary.

9 NEW SECTION. Section 71. Rights of holder of power of  
10 appointment or withdrawal. The holder of a presently  
11 exercisable general power of appointment or power to  
12 withdraw property from the trust has the rights of a trustor  
13 provided by [sections 68 through 70], inclusive, to the  
14 extent of the holder's power over the trust property.

15 NEW SECTION. Section 72. Notice in case involving  
16 future interest of beneficiary. (1) Subject to subsections  
17 (2) and (3), it is sufficient compliance with a requirement  
18 in [sections 1 through 215] that notice be given to a  
19 beneficiary, or to a person interested in the trust, if  
20 notice is given as follows:

21 (a) Whenever an interest has been limited on any  
22 future contingency to persons who will compose a certain  
23 class upon the happening of a certain event without further  
24 limitation, notice shall be given to the persons in being  
25 who would constitute the class if the event had happened

1 immediately before the commencement of the proceedings.

2 (b) Whenever an interest has been limited to a living  
3 person and the same interest, or a share therein, has been  
4 further limited upon the happening of a future event to the  
5 surviving spouse or to persons who are or may be the  
6 distributees, heirs, issue, or other kindred of the living  
7 persons, notice shall be given to the living person.

8 (c) Whenever an interest has been limited upon the  
9 happening of any future event to a person, or a class of  
10 persons, or both, and the interest, or a share of the  
11 interest, has been further limited upon the happening of an  
12 additional future event to another person, or a class of  
13 persons, or both, notice shall be given to the person or  
14 persons in being who would take the interest upon the  
15 happening of the first of these events.

16 (2) If a conflict of interest involving the subject  
17 matter of the trust proceeding exists between a person to  
18 whom notice is required to be given and a person to whom  
19 notice is not otherwise required to be given under  
20 subsection (1), notice shall also be given to persons not  
21 otherwise entitled to notice under subsection (1) with  
22 respect to whom the conflict of interest exists.

23 (3) Nothing in this section affects any of the  
24 following:

25 (a) requirements for notice to:

- 1 (i) a person who has requested special notice;  
 2 (ii) a person who has filed notice of appearance; or  
 3 (iii) a particular person or entity required by statute  
 4 to be given notice.

5 (b) Availability of a guardian ad litem pursuant to  
 6 [section 187].

7 NEW SECTION. **Section 73.** Duty to administer trust. On  
 8 acceptance of the trust, the trustee has a duty to  
 9 administer the trust according to the trust instrument and,  
 10 except to the extent the trust instrument provides  
 11 otherwise, according to [sections 1 through 215].

12 NEW SECTION. **Section 74.** Duties of trustee of  
 13 revocable trust. (1) Except as provided in subsection (2),  
 14 the trustee of a revocable trust shall follow any written  
 15 direction acceptable to the trustee given from time to time:

16 (a) by the person then having the power to revoke the  
 17 trust or the part thereof with respect to which the  
 18 direction is given; or

19 (b) by the person to whom the trustor delegates the  
 20 right to direct the trustee.

21 (2) If a written direction given under subsection (1)  
 22 would have the effect of modifying the trust, the trustee  
 23 has no duty to follow the direction unless it complies with  
 24 the requirements for modifying the trust.

25 NEW SECTION. **Section 75.** Duty of loyalty. (1) The

1 trustee has a duty to administer the trust solely in the  
 2 interest of the beneficiaries.

3 (2) It is not a violation of the duty provided in  
 4 subsection (1) for a trustee who administers two trusts to  
 5 sell, exchange, or participate in the sale or exchange of  
 6 trust property between the trusts, if both of the following  
 7 requirements are met:

8 (a) the sale or exchange is fair and reasonable with  
 9 respect to the beneficiaries of both trusts; and

10 (b) the trustee gives to the beneficiaries of both  
 11 trusts notice of all material facts related to the sale or  
 12 exchange that the trustee knows or should know.

13 NEW SECTION. **Section 76.** Duty to deal impartially  
 14 with beneficiaries. If a trust has two or more  
 15 beneficiaries, the trustee has a duty to deal impartially  
 16 with them.

17 NEW SECTION. **Section 77.** Duty to avoid conflict of  
 18 interest. (1) The trustee has a duty not to use or deal with  
 19 trust property for the trustee's own profit or for any other  
 20 purpose unconnected with the trust, nor to take part in any  
 21 transaction in which the trustee has an interest adverse to  
 22 the beneficiary.

23 (2) The trustee may not enforce any claim against the  
 24 trust property that the trustee purchased after or in  
 25 contemplation of appointment as trustee, but the court may

1 allow the trustee to be reimbursed from trust property the  
2 amount that the trustee paid for the claim.

3 (3) A transaction between the trustee and a  
4 beneficiary which occurs during the existence of the trust  
5 or while the trustee's influence with the beneficiary  
6 remains and by which the trustee obtains an advantage from  
7 the beneficiary is presumed to be a violation of the  
8 trustee's fiduciary duties. This presumption is a  
9 presumption affecting the burden of proof. This subsection  
10 does not apply to the provisions of an agreement between a  
11 trustee and a beneficiary relating to the hiring or  
12 compensation of the trustee.

13 NEW SECTION. Section 78. Duty not to undertake  
14 adverse trust. The trustee of one trust has a duty not to  
15 knowingly become a trustee of another trust adverse in its  
16 nature to the interest of the beneficiary of the first  
17 trust, and a duty to eliminate the conflict or resign as  
18 trustee when the conflict is discovered.

19 NEW SECTION. Section 79. Duty to take control of and  
20 preserve trust property. The trustee has a duty to take  
21 reasonable steps under the circumstances to take and keep  
22 control of and to preserve the trust property.

23 NEW SECTION. Section 80. Duty to make trust property  
24 productive. The trustee has a duty to make the trust  
25 property productive under the circumstances and in

1 furtherance of the purposes of the trust.

2 NEW SECTION. Section 81. Duty to dispose of improper  
3 investments. (1) Except as provided in subsection (2), the  
4 trustee has a duty within a reasonable time to dispose of  
5 any part of the trust property included in the trust at the  
6 time of its creation, or later acquired by or added to the  
7 trust, that would not be a proper investment for the trustee  
8 to make.

9 (2) Unless the trust instrument expressly provides  
10 otherwise, the trustee may, without liability, continue to  
11 hold property included in the trust at its creation or later  
12 added to the trust or acquired pursuant to proper authority,  
13 if retention is in the best interests of the trust or in  
14 furtherance of the purposes of the trust.

15 NEW SECTION. Section 82. Duty to keep trust property  
16 separate and identified. The trustee has a duty to do the  
17 following:

18 (1) to keep the trust property separate from other  
19 property not subject to the trust; and

20 (2) to see that the trust property is designated as  
21 property of the trust.

22 NEW SECTION. Section 83. Duty to enforce claims. The  
23 trustee has a duty to take reasonable steps to enforce  
24 claims that are part of the trust property.

25 NEW SECTION. Section 84. Duty to defend actions. The

1 trustee has a duty to take reasonable steps to defend  
2 actions that may result in a loss to the trust.

3 NEW SECTION. Section 85. Duty not to delegate. (1)  
4 The trustee has a duty not to delegate to others the  
5 performance of acts that the trustee can reasonably be  
6 required personally to perform and may not transfer the  
7 office of trustee to another person nor delegate the entire  
8 administration of the trust to a cotrustee or other person.

9 (2) In a case where a trustee has properly delegated a  
10 matter to an agent, cotrustee, or other person, the trustee  
11 has a duty to exercise general supervision over the person  
12 performing the delegated matter.

13 NEW SECTION. Section 86. Duty with respect to  
14 cotrustees. If a trust has more than one trustee, each  
15 trustee has a duty to do the following:

16 (1) to participate in the administration of the trust;  
17 and

18 (2) to take reasonable steps to prevent a cotrustee  
19 from committing a breach of trust or to compel a cotrustee  
20 to redress a breach of trust.

21 NEW SECTION. Section 87. Duty to use special skills.  
22 (1) The trustee has a duty to apply the full extent of the  
23 trustee's skills.

24 (2) If the trustor, in selecting the trustee, has  
25 relied on the trustee's representation of having special

1 skills, the trustee is held to the standard of the skills  
2 represented.

3 NEW SECTION. Section 88. Certain actions not  
4 violations of duties. The provision of services for  
5 compensation by a regulated financial institution or its  
6 affiliates in the ordinary course of business either to a  
7 trust of which it also acts as trustee or to a person  
8 dealing with the trust is not a violation of the duty  
9 provided in [section 75 or 77]. For the purposes of this  
10 section, "affiliate" means a corporation that directly or  
11 indirectly through one or more intermediaries controls, is  
12 controlled by, or is under common control with another  
13 domestic or foreign corporation.

14 NEW SECTION. Section 89. Duty to use ordinary skill  
15 and prudence. (1) The trustee shall administer the trust  
16 with the care, skill, prudence, and diligence under the  
17 circumstances then prevailing that a prudent person would  
18 use to accomplish the purposes of the trust as determined  
19 from the trust instrument.

20 (2) When investing, reinvesting, purchasing,  
21 acquiring, exchanging, selling, and managing trust property,  
22 the trustee shall act with the care, skill, prudence, and  
23 diligence under the circumstances then prevailing, including  
24 but not limited to the general economic conditions and the  
25 anticipated needs of the trust and its beneficiaries, that a

1 prudent person would use to accomplish the purposes of the  
2 trust as determined from the trust instrument. In the course  
3 of administering the trust pursuant to this standard,  
4 individual investments shall be considered as part of an  
5 overall investment strategy.

6 (3) The trustor may expand or restrict the standards  
7 provided in subsections (1) and (2) by express provisions in  
8 the trust instrument. A trustee is not liable to a  
9 beneficiary for the trustee's reliance on these express  
10 provisions.

11 NEW SECTION. Section 90. Standard of care not  
12 affected by compensation. A trustee's standard of care and  
13 performance in administering the trust is not affected by  
14 whether or not the trustee receives any compensation.

15 NEW SECTION. Section 91. Interpretation of trust  
16 terms concerning legal investments. If a trust created  
17 before, on, or after October 1, 1989, refers to "investments  
18 permissible by law for investment of trust funds",  
19 "authorized by law for investment of trust funds", "legal  
20 investments", "authorized investments", or "investments  
21 acquired using the judgment and care which men of prudence,  
22 discretion, and intelligence exercise in the management of  
23 their own affairs, not in regard to speculation, but in  
24 regard to the permanent disposition of their funds,  
25 considering the probable income, as well as the probable

1 safety of their capital", or uses other words of similar  
2 meaning in defining the powers of the trustee relative to  
3 investments, such language, in the absence of other  
4 controlling or modifying provisions of the trust instrument,  
5 shall be construed as imposing the standard of care provided  
6 by [section 89] and authorizing any investment permitted  
7 under [sections 105 through 137].

8 NEW SECTION. Section 92. Trustee's general duty to  
9 report information to beneficiaries. The trustee has a duty  
10 to keep the beneficiaries of the trust reasonably informed  
11 of the trust and its administration.

12 NEW SECTION. Section 93. Duty to report information  
13 about trust on request. Except as provided in [section 95],  
14 on reasonable request by a beneficiary, the trustee shall  
15 provide the beneficiary with a report of information about  
16 the assets, liabilities, receipts, and disbursements of the  
17 trust, the acts of the trustee, and the particulars relating  
18 to the administration of the trust relevant to the  
19 beneficiary's interest, including the terms of the trust  
20 that describe or affect the beneficiary's interest.

21 NEW SECTION. Section 94. Duty to provide annual  
22 statement to income beneficiaries. Except as provided in  
23 [section 95], the trustee shall annually mail each income  
24 beneficiary an itemized statement of all current receipts  
25 and disbursements of both principal and income.

**NEW SECTION. Section 95. Exceptions to duty to report**

information and to provide annual statement. The trustee is not required to report information or to provide an annual statement to a beneficiary in any of the following circumstances:

(1) to the extent the trust instrument waives the report or annual statement;

(2) in the case of a beneficiary of a revocable trust, as provided in [section 68].

(3) as to a beneficiary who has waived in writing the right to a report or annual statement. A waiver of rights under this subsection may be withdrawn in writing at any time as to the most recent annual statement or future annual statements. A waiver has no effect of the beneficiary's right to petition for a report, statement, or account pursuant to [section 179]; or

(4) if the beneficiary and the trustee are the same person.

**NEW SECTION. Section 96. Permissive accounts. At any**

time during the term of the trust or upon the termination of the trust, the trustee may mail an account to trust beneficiaries. To effectively bar a beneficiary from an action against the trustee pursuant to [section 159], the account must contain the following information:

(1) a statement of receipts and disbursements of

principal and income that have occurred since the last account;

(2) a statement of the assets and liabilities of the trust since the last account;

(3) the trustee's compensation since the last account;

(4) the agents hired by the trustee, their relationship to the trustee, if any, and their compensation since the last account;

(5) a statement that the recipient of the account may petition the court pursuant to [section 179] to obtain a court review of the account and of the acts of the trustee; and

(6) a statement that claims against the trustee for breach of trust may not be made after the expiration of 3 years from the date the beneficiary receives an account disclosing facts giving rise to the claim.

**NEW SECTION. Section 97. Discretionary powers to be**

exercised reasonably. Except as provided in [section 98], a discretionary power conferred upon a trustee is not left to the trustee's arbitrary discretion, but shall be exercised reasonably.

**NEW SECTION. Section 98. Standard for exercise of**

"absolute", "sole", or "uncontrolled" powers. (1) Subject to the additional requirements of subsection (2), if a trust instrument confers "absolute", "sole", or "uncontrolled"

1 discretion on a trustee, the trustee shall act in accordance  
2 with fiduciary principles and may not act in disregard of  
3 the purposes of the trust.

4 (2) Notwithstanding the trustor's use of terms like  
5 "absolute", "sole", or "uncontrolled", a person who is a  
6 beneficiary of a trust and who, either individually or as  
7 trustee or cotrustee, holds a power to take or distribute  
8 income or principal to or for the benefit of himself or  
9 herself pursuant to a standard, shall exercise that power  
10 reasonably and in accordance with the standard. In any case  
11 in which the standard governing the exercise of the power  
12 does not clearly indicate that a broader power is intended,  
13 the holder of the power may exercise it in his or her favor  
14 only for his or her health, education, support, or  
15 maintenance.

16 NEW SECTION. Section 99. Definitions. As used in  
17 [sections 99 through 104], the following definitions apply:

18 (1) "Charitable trust" means a charitable trust as  
19 described in section 4947(a)(1) of the Internal Revenue  
20 Code.

21 (2) "Private foundation" means a private foundation as  
22 defined in section 509 of the Internal Revenue Code.

23 (3) "Split-interest trust" means a split-interest  
24 trust as described in section 4947(a)(2) of the Internal  
25 Revenue Code.

1 NEW SECTION. Section 100. Distribution under  
2 charitable trust or private foundation. During any period  
3 when a trust is considered to be a charitable trust or a  
4 private foundation, the trustee shall distribute its income  
5 for each taxable year (and principal if necessary) at a time  
6 and in a manner that will not subject the property of the  
7 trust to tax under section 4942 of the Internal Revenue  
8 Code.

9 NEW SECTION. Section 101. Restrictions on trustees  
10 under charitable trust, private foundations, or  
11 split-interest trust. During any period when a trust is  
12 considered to be a charitable trust, a private foundation,  
13 or a split-interest trust, the trustee may not do any of the  
14 following:

15 (1) engage in any act of self-dealing as defined in  
16 section 4941(d) of the Internal Revenue Code;

17 (2) retain any excess business holdings as defined in  
18 section 4943(c) of the Internal Revenue Code;

19 (3) make any investments in such manner as to subject  
20 the property of the trust to tax under section 4944 of the  
21 Internal Revenue Code; or

22 (4) make any taxable expenditure as defined in section  
23 4945(d) of the Internal Revenue Code.

24 NEW SECTION. Section 102. Exceptions applicable to  
25 split-interest trusts. With respect to split-interest

1 trusts:

2 (1) [Subsections (2) and (3) of section 101] do not  
3 apply to any trust described in section 4947(b)(3) of the  
4 Internal Revenue Code.

5 (2) [Section 101] does not apply with respect to any  
6 of the following:

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

11 (b) any amounts in trust other than amounts for which  
12 a deduction was allowed under section 170, 545(b)(2),  
13 556(b)(2), 642(c), 2055, 2106(a)(2), or 2522 of the Internal  
14 Revenue Code, if the amounts are segregated, as that term is  
15 defined in section 4947(a)(3) of the Internal Revenue Code,  
16 from amounts for which no deduction was allowable; or

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

19 **NEW SECTION. Section 103.** Incorporation in trust  
20 instruments. The provisions of [sections 100 through 102]  
21 shall be considered to be contained in the instrument  
22 creating every trust to which [sections 99 through 104]  
23 apply. Any provision of the instrument inconsistent with or  
24 contrary to [sections 99 through 104] is without effect.

25 **NEW SECTION. Section 104.** Proceedings. (1) A

1 proceeding contemplated by section 101(1)(3) of the federal  
2 Tax Reform Act of 1969 (Public Law 91-172) may be commenced  
3 pursuant to [section 179] by the organization involved. All  
4 specifically named beneficiaries of the organization and the  
5 attorney general shall be parties to the proceedings.  
6 Notwithstanding [section 165], this provision is not  
7 exclusive and does not limit any jurisdiction that otherwise  
8 exists.

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

15 **NEW SECTION. Section 105.** General powers of trustee.  
16 A trustee has the following powers without the need to  
17 obtain court authorization:

18 (1) the powers conferred by the trust instrument;

19 (2) except as limited in the trust instrument, the  
20 powers conferred by statute; and

21 (3) except as limited in the trust instrument, the  
22 power to perform any act that a trustee would perform for  
23 the purposes of the trust under the standard of care  
24 provided in [section 89].

25 **NEW SECTION. Section 106.** Power of court to relieve



1 trustee from restrictions on powers. [Sections 109 through  
2 137] do not affect the power of a court to relieve a trustee  
3 from restrictions on the exercise of powers under the trust  
4 instrument.

5 NEW SECTION. Section 107. Exercise of powers subject  
6 to trustee's duties. The grant of a power to a trustee,  
7 whether by the trust instrument, by statute, or by the  
8 court, does not in itself require or permit the exercise of  
9 the power. The exercise of a power by a trustee is subject  
10 to the trustee's fiduciary duties.

11 NEW SECTION. Section 108. Application of rules  
12 governing trustees' powers. An instrument that incorporates  
13 the powers provided in former Title 72, chapter 21,  
14 ("Montana Trustees' Powers Act") shall be considered to  
15 refer to the powers provided [sections 109 through 137]. For  
16 this purpose, the trustee's powers under former Title 72,  
17 chapter 21, ("Montana Trustees' Powers Act") are not  
18 diminished and the trustee is not required to obtain court  
19 approval for exercise of a power for which court approval  
20 was not required by former law.

21 NEW SECTION. Section 109. Collecting and holding  
22 property. The trustee has the power to collect, hold, and  
23 retain trust property received from a trustor or any other  
24 person until, in the judgment of the trustee, disposition of  
25 the property should be made. The property may be retained

1 even though it includes property in which the trustee is  
2 personally interested.

3 NEW SECTION. Section 110. Receiving additions to  
4 trust. The trustee has the power to accept additions to the  
5 property of the trust from a trustor or any other person.

6 NEW SECTION. Section 111. Participation in business  
7 -- change in form of business. The trustee has the power to  
8 continue to participate in the operation of any business or  
9 other enterprise that is part of the trust property and may  
10 effect incorporation, dissolution, or other change in the  
11 form of the organization of the business or enterprise.

12 NEW SECTION. Section 112. Investments. The trustee  
13 has the power to invest in any kind of property, whether  
14 real, personal, or mixed.

15 NEW SECTION. Section 113. Investments in obligations  
16 of United States government. In the absence of an express  
17 provision to the contrary in a trust instrument, whenever  
18 the instrument directs or permits investment in obligations  
19 of the United States government, the trustee has the power  
20 to invest in those obligations directly or in the form of an  
21 interest in a money market mutual fund registered under the  
22 Investment Company Act of 1940 (15 U.S.C. section 80a-1 et  
23 seq.) or an investment vehicle authorized for the collective  
24 investment of trust funds pursuant to section 9.18 of Title  
25 12 of the Code of Federal Regulations, the portfolios of

1 which are limited to United States government obligations  
2 and to repurchase agreements fully collateralized by United  
3 States government obligations.

4 NEW SECTION. Section 114. Deposits. (1) The trustee  
5 has the power to deposit trust funds at reasonable interest  
6 with any of the following:

- 7 (a) an insured commercial or savings bank;
- 8 (b) an insured building and loan association; or
- 9 (c) an insured credit union.

10 (2) A trustee may deposit trust funds as described in  
11 subsection (1) in a financial institution operated by, or  
12 that is an affiliate of, the trustee. For the purpose of  
13 this subsection, "affiliate" means a corporation that  
14 directly or indirectly through one or more intermediaries  
15 controls, is controlled by, or is under common control with  
16 another domestic or foreign corporation.

17 (3) This section does not limit the power of a trustee  
18 in a proper case to deposit trust funds in institutions as  
19 described in subsection (1) that are subject to notice or  
20 other conditions respecting withdrawal prescribed by law or  
21 governmental regulation.

22 (4) Nothing in this section prevents the trustee from  
23 holding an amount of trust property reasonably necessary for  
24 the orderly administration of the trust in the form of cash  
25 or in a checking account without interest.

1 NEW SECTION. Section 115. Acquisition and disposition  
2 of property. The trustee has the power to acquire or dispose  
3 of property, for cash or on credit, at public or private  
4 sale, or by exchange.

5 NEW SECTION. Section 116. Management of property. The  
6 trustee has the power to manage, control, divide, develop,  
7 improve, exchange, partition, change the character of, or  
8 abandon trust property or any interest therein.

9 NEW SECTION. Section 117. Encumbrances. The trustee  
10 has the power to encumber, mortgage, or pledge trust  
11 property for a term within or extending beyond the term of  
12 the trust in connection with the exercise of any power  
13 vested in the trustee.

14 NEW SECTION. Section 118. Repairs and alterations of  
15 property. The trustee has the power to do any of the  
16 following:

- 17 (1) make ordinary or extraordinary repairs,
- 18 alterations, improvements in buildings or other trust
- 19 property;
- 20 (2) demolish any improvements; or
- 21 (3) raze existing or erect new party walls or
- 22 buildings.

23 NEW SECTION. Section 119. Development of land. The  
24 trustee has the power to do any of the following:

- 25 (1) subdivide or develop land;

(2) dedicate land to public use;

(3) make or obtain the vacation of plats and adjust boundaries;

(4) adjust differences in valuation on exchange or partition by giving or receiving consideration; or

(5) dedicate easements to public use without consideration.

**NEW SECTION. Section 120. Leases.** The trustee has the power to enter into a lease for any purpose as lessor or lessee with or without the option to purchase or renew and for a term within or extending beyond the term of the trust.

**NEW SECTION. Section 121. Mineral leases.** The trustee has the power to enter into a lease or arrangement for exploration and removal of gas, oil, or other minerals, and to enter into a community oil lease or a pooling or utilization agreement, and for a term within or extending beyond the term of the trust.

**NEW SECTION. Section 122. Options.** The trustee has the power to grant an option involving disposition of trust property or to take an option for the acquisition of any property, and an option may be granted or taken that is exercisable beyond the term of the trust.

**NEW SECTION. Section 123. Voting rights with respect to corporate shares, memberships, or property.** With respect to any shares of stock of a domestic or foreign corporation,

any membership in a nonprofit corporation, or any other property, a trustee has the power to do any of the following:

(1) vote in person and give proxies to exercise any voting rights with respect to the shares, memberships, or property;

(2) waive notice of a meeting or give consent to the holding of a meeting; or

(3) authorize, ratify, approve, or confirm any action that could be taken by shareholders, members, or property owners.

**NEW SECTION. Section 124. Payment of calls and assessments.** The trustee has the power to pay calls, assessments, and any other sums chargeable or accruing against or on account of securities.

**NEW SECTION. Section 125. Stock subscriptions and conversions.** The trustee has the power to sell or exercise stock subscription or conversion rights.

**NEW SECTION. Section 126. Consent to change in form of business -- voting trusts.** The trustee has the power to consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise, and to participate in voting trusts, pooling arrangements, and foreclosures, and in connection therewith, to deposit

1 securities with and transfer title and delegate discretions  
2 to any protective or other committee as the trustee may  
3 consider advisable.

4 NEW SECTION. Section 127. Holding securities in name  
5 of nominee. The trustee has the power to hold a security in  
6 the name of a nominee or in other form without disclosure of  
7 the trust so that title to the security may pass by  
8 delivery, but the trustee is liable for any act of the  
9 nominee in connection with the security so held.

10 NEW SECTION. Section 128. Insurance. The trustee has  
11 the power to insure the property of the trust against damage  
12 or loss and to insure the trustee against liability with  
13 respect to third persons.

14 NEW SECTION. Section 129. Borrowing money. The  
15 trustee has the power to borrow money for any trust purpose  
16 to be repaid from trust property.

17 NEW SECTION. Section 130. Payment and settlement of  
18 claims. The trustee has the power to do any of the  
19 following:

- 20 (1) pay or contest any claim;
- 21 (2) settle a claim by or against the trust by
- 22 compromise, arbitration, or otherwise; or
- 23 (3) release, in whole or in part, any claim belonging
- 24 to the trust.

25 NEW SECTION. Section 131. Payment of taxes, trustee's

1 compensation, and other expenses. The trustee has the power  
2 to pay taxes, assessments, reasonable compensation of the  
3 trustee and of employees and agents of the trust, and other  
4 expenses incurred in the collection, care, administration,  
5 and protection of the trust.

6 NEW SECTION. Section 132. Loans to beneficiary. The  
7 trustee has the following powers:

- 8 (1) to make loans out of trust property to the
- 9 beneficiary on terms and conditions that the trustee
- 10 determines are fair and reasonable under the circumstances;
- 11 and
- 12 (2) to guarantee loans to the beneficiary by
- 13 encumbrances on trust property.

14 NEW SECTION. Section 133. Distribution to  
15 beneficiaries under legal disability. The trustee has the  
16 power to pay any sum distributable to a beneficiary, without  
17 regard to whether the beneficiary is under a legal  
18 disability, by paying the sum to the beneficiary or by  
19 paying the sum to another person for the use or benefit of  
20 the beneficiary.

21 NEW SECTION. Section 134. Nature and value of  
22 distributions. The trustee has the power to effect  
23 distribution of property and money in divided or undivided  
24 interests and to adjust resulting differences in valuation.  
25 A distribution in kind may be made pro rata or non-pro rata.

1        **NEW SECTION. Section 135.** Hiring persons. The trustee  
 2 has the power to hire persons, including accountants,  
 3 attorneys, auditors, investment advisors, or other agents,  
 4 even if they are associated or affiliated with the trustee,  
 5 to advise or assist the trustee in the performance of  
 6 administrative duties.

7        **NEW SECTION. Section 136.** Execution and delivery of  
 8 instruments. The trustee has the power to execute and  
 9 deliver all instruments which are needed to accomplish or  
 10 facilitate the exercise of the powers vested in the trustee.

11       **NEW SECTION. Section 137.** Actions and proceedings.  
 12 The trustee has the power to prosecute or defend actions,  
 13 claims, or proceedings for the protection of trust property  
 14 and of the trustee in the performance of the trustee's  
 15 duties.

16       **NEW SECTION. Section 138.** Short title. [Sections 138  
 17 through 150] may be cited as the "Revised Uniform Principal  
 18 and Income Act".

19       **NEW SECTION. Section 139.** Definitions. As used in  
 20 [sections 138 through 150], the following definitions apply:

21       (1) "Income beneficiary" means the person to whom  
 22 income is presently payable or for whom it is accumulated  
 23 for distribution as income.

24       (2) "Inventory value" means the adjusted basis for  
 25 federal income tax purposes.

1       (3) "Remainder beneficiary" means the person entitled  
 2 to principal, including income which has been accumulated  
 3 and added to principal.

4       (4) "Trustee" means the original trustee, any  
 5 succeeding or added trustee, and the personal representative  
 6 of a decedent's estate whenever a provision of this part is  
 7 applicable to the estate.

8       **NEW SECTION. Section 140.** Duty of trustee as to  
 9 receipts and expenditures. (1) A trust shall be administered  
 10 with due regard to the respective interests of income  
 11 beneficiaries and remainder beneficiaries. A trust is so  
 12 administered with respect to the allocation of receipts and  
 13 expenditures if a receipt is credited or an expenditure is  
 14 charged to income or principal or partly to each in any of  
 15 the following ways:

16       (a) in accordance with the terms of the trust  
 17 instrument, notwithstanding contrary provisions of this  
 18 part;

19       (b) in the absence of any contrary terms of the trust  
 20 instrument, in accordance with the provisions of this part;  
 21 or

22       (c) if neither subsection (a) nor (b) is applicable,  
 23 in accordance with the standard of care provided in [section  
 24 89] and with what is reasonable and equitable in view of the  
 25 interests of those entitled to income as well as of those

1 entitled to principal.

2 (2) If the trust gives the trustee discretion in  
3 crediting a receipt or charging an expenditure to income or  
4 principal or partly to each, no inference that the trustee  
5 has improperly exercised such discretion arises from the  
6 fact that the trustee has made an allocation contrary to a  
7 provision of this part.

8 NEW SECTION. Section 141. Income -- principal --  
9 charges. (1) Income is the return in money or property  
10 derived from the use of principal, including return received  
11 as:

12 (a) rent of real or personal property, including sums  
13 received for cancellation or renewal of a lease;

14 (b) interest on money lent, including sums received as  
15 consideration for the prepayment of principal except as  
16 provided in [section 145] on bond premium and bond discount;

17 (c) income earned during administration of a  
18 decedent's estate as provided in [section ~~144~~ 143];

19 (d) corporate distributions as provided in [section  
20 ~~145~~ 144];

21 (e) accrued increment on bonds or other obligations  
22 issued at discount as provided in [section 145];

23 (f) receipts from business and farming operations as  
24 provided in [section 146];

25 (g) receipts from disposition of natural resources as

1 provided in [sections 147 and 148]; or

2 (h) receipts from other principal subject to depletion  
3 as provided in [section 149].

4 (2) Principal is the property which has been set aside  
5 by the owner or the person legally empowered so that it is  
6 held in trust eventually to be delivered to a remainder  
7 beneficiary, while the return or use of the principal is in  
8 the meantime taken or received by or held for accumulation  
9 for an income beneficiary. Principal includes the following:

10 (a) consideration received by the trustee on the sale  
11 or other transfer of principal or a repayment of a loan or  
12 as a refund or replacement or change in the form of  
13 principal;

14 (b) proceeds of property taken on eminent domain  
15 proceedings;

16 (c) proceeds of insurance upon property forming part  
17 of the principal except proceeds of insurance upon a  
18 separate interest of an income beneficiary;

19 (d) stock dividends, receipts on liquidation of a  
20 corporation, and other corporate distributions as provided  
21 in [section 144];

22 (e) receipts from the disposition of corporate  
23 securities as provided in [section 145];

24 (f) royalties and other receipts from disposition of  
25 natural resources as provided in [sections 147 and 148];

(g) receipts from other principal subject to depletion as provided in [section 149];

(h) any profit resulting from any change in the form of principal; or

(i) any allowances for depreciation established under [section 150(1)(b)].

(3) After determining income and principal in accordance with the terms of the trust instrument or of this part, the trustee shall charge to income or principal the expenses and other charges as provided in [section 150].

**NEW SECTION. Section 142.** When right to income arises

-- apportionment of income. (1) An income beneficiary is entitled to income from the date specified in the trust instrument or, if none is specified, from the date an item of property becomes subject to the trust. In the case of an item of property becoming subject to a trust by reason of a person's death, it becomes subject to the trust as of the date of the death of the person even though there is an intervening period of administration of the person's estate.

(2) Upon property becoming subject to a trust by reason of a person's death:

(a) Receipts due but not paid at the date of death of the person are principal.

(b) Receipts in the form of periodic payments (other than corporate distributions to stockholders), including

rent, interest, or annuities, not due at the date of the death of the person shall be treated as accruing from day to day. That portion of the receipt accruing before the date of death is principal and the balance is income.

(3) In all other cases, any receipt from income-producing property is income even though the receipt was earned or accrued in whole or in part before the date when the property became subject to the trust.

(4) On termination of an income interest, the income beneficiary whose interest is terminated, or his or her estate, is entitled to income:

(a) undistributed on the date of termination;

(b) due but not paid to the trustee on the date of termination; and

(c) in the form of periodic payments (other than corporate distributions to stockholders), including rent, interest, or annuities, not due on the date of termination, accrued from day to day.

(5) Corporate distributions to stockholders shall be treated as due on the day fixed by the corporation for determination of stockholders of record entitled to distribution or, if no date is fixed, on the date of declaration of the distribution by the corporation.

**NEW SECTION. Section 143.** Income earned during administration of decedent's estate. (1) Unless the will

1 otherwise provides and subject to subsection (2), all  
 2 expenses incurred in connection with the settlement of a  
 3 decedent's estate, including debts, funeral expenses, estate  
 4 taxes, interest and penalties concerning taxes, family  
 5 allowances, fees of attorneys and personal representatives,  
 6 and court costs, shall be charged against the principal of  
 7 the estate.

8 (2) Unless the will otherwise provides, income from  
 9 the property of a decedent's estate after the death of the  
 10 testator and before distribution, including income from  
 11 property used to discharge liabilities, shall be determined  
 12 in accordance with the rules applicable to a trustee under  
 13 [sections 1 through 164] and distributed as follows:

14 (a) to specific legatees and devisees, the income from  
 15 the property bequeathed or devised to them respectively,  
 16 less taxes, ordinary repairs, and other expenses of  
 17 management and operation of the property, and an appropriate  
 18 portion of interest accrued since the death of the testator  
 19 and of taxes imposed on income (excluding taxes on capital  
 20 gains) that accrue during the period of administration;

21 (b) to all other legatees and devisees, except  
 22 legatees of pecuniary bequests not in trust, the balance of  
 23 the income, less the balance of taxes, ordinary repairs, and  
 24 other expenses of management and operation of all property  
 25 from which the estate is entitled to income, interest

1 accrued since the death of the testator, and taxes imposed  
 2 on income (excluding taxes on capital gains) that accrue  
 3 during the period of administration, in proportion to their  
 4 respective interests in the undistributed property of the  
 5 estate computed at times of distribution on the basis of  
 6 inventory value.

7 (3) Income received by a trustee under subsection (2)  
 8 shall be treated as income of the trust.

9 NEW SECTION. **Section 144. Corporate distributions.**

10 (1) Corporate distributions of shares of the distributing  
 11 corporation, including distributions in the form of a stock  
 12 split or stock dividend, are principal. A right to  
 13 subscribe to shares or other securities issued by the  
 14 distributing corporation accruing to stockholders on account  
 15 of their stock ownership and the proceeds of any sale of the  
 16 right, are principal.

17 (2) Except to the extent that the corporation  
 18 indicates that some part of a corporate distribution is a  
 19 settlement of preferred or guaranteed dividends accrued  
 20 since the trustee became a stockholder or is in lieu of an  
 21 ordinary cash dividend, a corporate distribution is  
 22 principal if the distribution is pursuant to any of the  
 23 following:

24 (a) a call of shares;

25 (b) a merger, consolidation, reorganization, or other



1 plan by which assets of the corporation are acquired by  
2 another corporation; or

3 (c) a total or partial liquidation of the corporation,  
4 including any distribution which the corporation indicates  
5 is a distribution in total or partial liquidation or any  
6 distribution of assets, other than cash, pursuant to a court  
7 decree or final administrative order by a government agency  
8 ordering distribution of the particular assets.

9 (3) Distributions made from ordinary income by a  
10 regulated investment company or by a trust qualifying and  
11 electing to be taxed under federal law as a real estate  
12 investment trust are income. All other distributions made by  
13 the company or trust, including distributions from capital  
14 gains, depreciation, or depletion, whether in the form of  
15 cash or an option to take new stock or cash or an option to  
16 purchase additional shares, are principal.

17 (4) Except as provided in subsections (1) through (3),  
18 all corporate distributions are income, including cash  
19 dividends, distributions of or rights to subscribe to shares  
20 or securities or obligations of corporations other than the  
21 distributing corporation, and the proceeds of the rights or  
22 property distributions. Except as provided in subsections  
23 (2) and (3), if the distributing corporation gives a  
24 stockholder an option to receive a distribution either in  
25 cash or in its own shares, the distribution chosen is

1 income.

2 (5) The trustee may rely upon any statement of the  
3 distributing corporation as to any fact relevant under any  
4 provision of this part concerning the source or character of  
5 dividends or distributions of corporate assets.

6 NEW SECTION. **Section 145. Bond premium and discount.**

7 (1) Bonds or other obligations for the payment of money are  
8 principal at their inventory value, except as provided in  
9 subsection (2) for discount bonds. No provision shall be  
10 made for amortization of bond premiums or for accumulation  
11 for discount. The proceeds of sale, redemption, or other  
12 disposition of the bonds or obligations are principal.

13 (2) The increment in value of a bond or other  
14 obligation for the payment of money payable at a future time  
15 in accordance with a fixed schedule of appreciation in  
16 excess of the price at which it was issued is distributable  
17 as income. The increment in value is distributable to the  
18 beneficiary who was the income beneficiary at the time of  
19 increment from the first principal cash available or, if  
20 none is available, when realized by sale, redemption, or  
21 other disposition. Whenever unrealized increment is  
22 distributed as income but out of principal, the principal  
23 shall be reimbursed for the increment when realized.

24 NEW SECTION. **Section 146. Business and farming**  
25 **operations.** (1) If a trustee uses any part of the principal

in the continuance of a business of which the trustor was a sole proprietor or a partner, the net profits of the business, computed in accordance with recognized methods of accounting for a comparable business, are income. If a loss results in any fiscal or calendar year, the loss falls on principal and may not be carried into any other fiscal or calendar year for purposes of calculating net income.

(2) Recognized methods of accounting for a comparable business shall be used to determine income from an agricultural or farming operation, including the raising of animals or the operation of a nursery.

**NEW SECTION. Section 147.** Disposition of natural resources. (1) If any part of the principal consists of a right to receive royalties, overriding or limited royalties, working interests, production payments, net profit interests, or other interests in minerals or other natural resources in, on, or under land, the receipts from taking the natural resources from the land shall be allocated as follows:

(a) If received as rent on a lease or extension payments on a lease, the receipts are income.

(b) If received from a production payment, the receipts are income to the extent of any factor for interest or its equivalent provided in the governing instrument. There shall be allocated to principal the fraction of the

balance of the receipts which the unrecovered cost of the production payment bears to the balance owed on the production payment, exclusive of any factor for interest or its equivalent. The receipts not allocated to principal are income.

(c) If received as a royalty, overriding or limited royalty or bonus, or from a working, net profit, or any other interest in minerals or other natural resources, receipts not provided for in subsections (1)(a) and (1)(b) shall be apportioned on a yearly basis in accordance with this paragraph whether or not any natural resource was being taken from the land at the time the trust was established. The receipts shall be allocated entirely to income or apportioned between income and principal as the trustee in its discretion may determine, but the amount added to principal as an allowance for depletion may not exceed the lesser of:

(i) the percentage of gross receipts allowed as a deduction for depletion in computing taxable income for federal income tax purposes or

(ii) 50% of the net receipts remaining after payment of expenses, direct and indirect, computed without allowance for depletion.

(2) This section does not apply to timber, water, soil, sod, dirt, turf, or mosses.

1        **NEW SECTION. Section 148. Timber.** If any part of the  
 2 principal consists of land from which merchantable timber  
 3 may be removed, the receipts from taking the timber from the  
 4 land shall be allocated in accordance with [section  
 5 140(1)(c)].

6        **NEW SECTION. Section 149. Other property subject to**  
 7 **depletion.** Except as provided in [sections 147 and 148], if  
 8 the principal consists of property subject to depletion,  
 9 including leaseholds, patents, copyrights, royalty rights,  
 10 and rights to receive payments on a contract for deferred  
 11 compensation, receipts from the property, not in excess of  
 12 5% per year of its inventory value, are income, and the  
 13 balance is principal.

14        **NEW SECTION. Section 150. Charges against income and**  
 15 **principal.** (1) The following charges shall be made against  
 16 income:

17        (a) ordinary expenses incurred in connection with the  
 18 administration, management, or preservation of the trust  
 19 property, including:

20        (i) regularly recurring taxes assessed against any  
 21 portion of the principal;

22        (ii) water rates;

23        (iii) premiums on insurance taken upon the interests of  
 24 the income beneficiary, remainder beneficiary, or trustee;

25        (iv) interest paid by the trustee; and

1        (v) ordinary repairs;

2        (b) a reasonable allowance for depreciation on  
 3 property subject to depreciation under generally accepted  
 4 accounting principles, but no allowance may be made for  
 5 depreciation on that portion of any real property used by a  
 6 beneficiary as a residence or for depreciation of any  
 7 property held by the trustee on July 1, 1983, for which the  
 8 trustee was not then making an allowance for depreciation;

9        (c) not less than one-half of court costs, attorney  
 10 fees, and other fees on periodic judicial accounting, unless  
 11 the court directs otherwise;

12        (d) court costs, attorney fees, and fees on other  
 13 accountings or judicial proceedings if the matter primarily  
 14 concerns the income interest, unless the court directs  
 15 otherwise;

16        (e) not less than one-half of the trustee's regular  
 17 compensation, whether based on a percentage of principal or  
 18 income, and all expenses reasonably incurred for current  
 19 management of principal and application of income, unless  
 20 the court directs otherwise; and

21        (f) any tax levied upon receipts defined as income  
 22 under [sections 138 through 150] or the trust instrument and  
 23 payable by the trustee.

24        (2) If charges against income are of unusual amount,  
 25 the trustee may, by means of reserves or other reasonable

1 means, charge them over a reasonable period of time and  
2 withhold from distribution sufficient sums to regularize  
3 distributions.

4 (3) (a) The following charges shall be made against  
5 principal:

6 (i) trustee's compensation not chargeable to income  
7 under subsections (1)(d) and (1)(e);

8 (ii) special compensation of trustees;

9 (iii) expenses reasonably incurred in connection with  
10 principal, court costs, and attorney fees primarily  
11 concerning matters of principal; and

12 (iv) trustee's compensation computed on principal as an  
13 acceptance, distribution, or termination fee;

14 (b) charges not provided for in subsection (1),  
15 including:

16 (i) the costs of investing and reinvesting principal;

17 (ii) the payments on principal of an indebtedness,  
18 including a mortgage amortized by periodic payments of  
19 principal;

20 (iii) expenses for preparation of property for rental  
21 or sale; and

22 (iv) unless the court directs otherwise, expenses  
23 incurred in maintaining or defending any action to construe  
24 the trust or protect it or the property or assure the title  
25 of any trust property;

1 (c) extraordinary repairs or expenses incurred in  
2 making a capital improvement to principal, including special  
3 assessments, but a trustee may establish an allowance for  
4 depreciation DEPRECIATION out of income to the extent  
5 permitted by subsection (1)(b) and by [section 146];

6 (d) any tax levied upon profit, gain, or other  
7 receipts allocated to principal, notwithstanding  
8 denomination of the tax as an income tax by the taxing  
9 authority; and

10 (e) if an estate or inheritance tax is levied in  
11 respect to a trust in which both an income beneficiary and a  
12 remainder beneficiary have an interest, any amount  
13 apportioned to the trust, including interest and penalties,  
14 even though the income beneficiary also has rights in the  
15 principal.

16 (4) Regularly recurring charges payable from income  
17 shall be apportioned to the same extent and in the same  
18 manner that income is apportioned under [section 142].

19 NEW SECTION. Section 151. Breach of trust. A  
20 violation by the trustee of any duty that the trustee owes  
21 the beneficiary is a breach of trust.

22 NEW SECTION. Section 152. Trustee's liability to  
23 beneficiary for acts of agent. (1) Except as provided in  
24 subsection (2), the trustee is not liable to the beneficiary  
25 for the acts or omissions of an agent.

1 (2) The trustee is liable to the beneficiary for an  
2 act or omission of an agent employed by the trustee in the  
3 administration of the trust that would be a breach of the  
4 trust if committed by the trustee under any of the following  
5 circumstances:

6 (a) whenever the trustee has the power to direct the  
7 act of the agent;

8 (b) whenever the trustee delegates to the agent the  
9 authority to perform an act that the trustee is under a duty  
10 not to delegate;

11 (c) whenever the trustee does not use reasonable care  
12 in the selection of the agent or the retention of the agent  
13 selected by the trustee;

14 (d) whenever the trustee does not exercise proper  
15 supervision over the agent's conduct in a case where the  
16 trustee has the power to supervise the agent;

17 (e) whenever the trustee conceals the act of the  
18 agent; or

19 (f) whenever the trustee neglects to take reasonable  
20 steps to compel the agent to redress the wrong in a case  
21 where the trustee knows of the agent's acts or omissions.

22 (3) The liability of a trustee for acts or omissions  
23 of agents that occurred before October 1, 1989, is governed  
24 by prior law and not by this section.

25 NEW SECTION. **Section 153.** Trustee's liability to

1 beneficiary for acts of cotrustee. (1) Except as provided in  
2 subsection (2), a trustee is not liable to the beneficiary  
3 for a breach of trust committed by a cotrustee.

4 (2) A trustee is liable to the beneficiary for a  
5 breach committed by a cotrustee under any of the following  
6 circumstances:

7 (a) whenever the trustee participates in a breach of  
8 trust committed by the cotrustee;

9 (b) whenever the trustee improperly delegates the  
10 administration of the trust to the cotrustee;

11 (c) whenever the trustee approves, knowingly  
12 acquiesces in, or conceals a breach of trust committed by  
13 the cotrustee;

14 (d) whenever the trustee negligently enables the  
15 cotrustee to commit a breach of trust; or

16 (e) whenever the trustee neglects to take reasonable  
17 steps to compel the cotrustee to redress a breach of trust  
18 in a case where the trustee knows or has information from  
19 which the trustee reasonably should have known of the  
20 breach.

21 (3) The liability of a trustee for acts or omissions  
22 of a cotrustee that occurred before October 1, 1989, is  
23 governed by prior law and not by this section.

24 NEW SECTION. **Section 154.** Trustee's liability to  
25 beneficiary for acts of predecessor. (1) Except as provided

1 in subsection (2), a successor trustee is not liable to the  
2 beneficiary for a breach of trust committed by a predecessor  
3 trustee.

4 (2) A successor trustee is liable to the beneficiary  
5 for breach of trust involving acts or omissions of a  
6 predecessor trustee in any of the following circumstances:

7 (a) whenever the successor trustee knows or has  
8 information from which the successor trustee reasonably  
9 should have known of a situation constituting a breach of  
10 trust committed by the predecessor trustee, and the  
11 successor trustee improperly permits it to continue;

12 (b) whenever the successor trustee neglects to take  
13 reasonable steps to compel the predecessor trustee to  
14 deliver the trust property to the successor trustee; or

15 (c) whenever the successor trustee neglects to take  
16 reasonable steps to redress a breach of trust committed by  
17 the predecessor trustee in a case where the successor  
18 trustee knows or has information from which the successor  
19 trustee should have known of the predecessor trustee's  
20 breach.

21 (3) The liability of a trustee for acts or omissions  
22 of a predecessor trustee that occurred before October 1,  
23 1989, is governed by prior law and not by this section.

24 NEW SECTION. Section 155. Remedies for breach of  
25 trust. (1) If a trustee commits a breach of trust, or

1 threatens to commit a breach of trust, a beneficiary or  
2 cotrustee of the trust may commence a proceeding for any of  
3 the following purposes that is appropriate:

4 (a) to compel the trustee to perform the trustee's  
5 duties;

6 (b) to enjoin the trustee from committing a breach of  
7 trust;

8 (c) to compel the trustee to redress a breach of trust  
9 by payment of money or otherwise;

10 (d) to appoint a receiver or temporary trustee to take  
11 possession of the trust property and administer the trust;

12 (e) to remove the trustee;

13 (f) subject to [section 210], to set aside acts of the  
14 trustee;

15 (g) to reduce or deny compensation of the trustee;

16 (h) subject to [section 210], to impose an equitable  
17 lien or a constructive trust on trust property; or

18 (i) subject to [section 210], to trace trust property  
19 that has been wrongfully disposed of and recover the  
20 property or its proceeds.

21 (2) The provision of remedies for breach of trust in  
22 subsection (1) does not prevent resort to any other  
23 appropriate remedy provided by statute or the common law.

24 NEW SECTION. Section 156. Remedies for breach  
25 exclusively in equity. The remedies of a beneficiary against

1 the trustee are exclusively in equity.

2 **NEW SECTION. Section 157. Measure of liability for**  
3 **breach of trust.** (1) If the trustee commits a breach of  
4 trust, the trustee is chargeable with any of the following  
5 that is appropriate under the circumstances:

6 (a) any loss or depreciation in value of the trust  
7 estate resulting from the breach of trust, with interest;

8 (b) any profit made by the trustee through the breach  
9 of trust, with interest; or

10 (c) any profit that would have accrued to the trust  
11 estate if the loss of profit is the result of the breach of  
12 trust.

13 (2) If the trustee has acted reasonably under the  
14 circumstances as known to the trustee, the court, in its  
15 discretion, may excuse the trustee in whole or in part from  
16 liability under subsection (1) if it would be equitable to  
17 do so.

18 **NEW SECTION. Section 158. Measure of liability for**  
19 **interest.** If the trustee is liable for interest pursuant to  
20 [section 157], the trustee is liable for the greater of the  
21 following amounts:

22 (1) the amount of interest that accrues at the legal  
23 rate on judgments; or

24 (2) the amount of interest actually received.

25 **NEW SECTION. Section 159. Limitations on proceedings**

1 **against trustee.** (1) Unless a claim is previously barred by  
2 adjudication, consent, limitation, or otherwise:

3 (a) If a beneficiary has received an interim or final  
4 account in writing, or other written report, that adequately  
5 discloses the existence of a claim against the trustee for  
6 breach of trust, the claim is barred as to that beneficiary  
7 unless a proceeding to assert the claim is commenced within  
8 3 years after receipt of the account or report. An account  
9 or report adequately discloses existence of a claim if it  
10 provides sufficient information so that the beneficiary  
11 knows of the claim or reasonably should have inquired into  
12 the existence of the claim.

13 (b) If an interim or final account or other report  
14 does not adequately disclose the existence of a claim  
15 against the trustee for breach of trust, the claim is barred  
16 as to that beneficiary unless a proceeding to assert the  
17 claim is commenced within 3 years after the beneficiary  
18 discovered, or reasonably should have discovered, the  
19 existence of the claim.

20 (2) For the purpose of subsection (1), a beneficiary  
21 is considered to have received an account or report, as  
22 follows:

23 (a) in the case of an adult who is reasonably capable  
24 of understanding the account or report, if it is received by  
25 the adult personally;

(b) in the case of an adult who is not reasonably capable of understanding the account or report, if it is received by the person's legal representative, including a guardian ad litem or other person appointed for this purpose; or

(c) in the case of a minor, if it is received by the minor's guardian or, if the minor does not have a guardian, if it is received by the minor's parent so long as the parent does not have a conflict of interest.

(3) The limitations period applicable to actions by a beneficiary against a trustee on a claim that arose before October 1, 1989, is governed by this section, except that a claim arising before October 1, 1989, is not barred by this section until October 1, 1990.

**NEW SECTION. Section 160.** Exculpation of trustee. (1) Except as provided in subsection (2), the trustee can be relieved of liability for breach of trust by provisions in the trust instrument.

(2) A provision in the trust instrument is not effective to relieve the trustee of liability:

(a) for breach of trust committed intentionally, with gross negligence, or with reckless indifference to the interest of the beneficiary; or

(b) for any profit that the trustee derives from a breach of trust.

**NEW SECTION. Section 161.** Nonliability for following instructions under revocable trust. (1) Notwithstanding [section 160], a trustee of a revocable trust is not liable to a beneficiary for any act performed or omitted pursuant to written directions from the person holding the power to revoke, including a person to whom the power to direct the trustee is delegated.

(2) Subsection (1) applies to a trust that is revocable in part with respect to the interest of the beneficiary in that part of the trust property.

**NEW SECTION. Section 162.** Consent of beneficiary to relieve trustee of liability for breach of trust. (1) Except as provided in subsections (2) and (3), a beneficiary may not hold the trustee liable for an act or omission of the trustee as a breach of trust if the beneficiary consented to the act or omission before or at the time of the act or omission.

(2) The consent of the beneficiary does not preclude the beneficiary from holding the trustee liable for a breach of trust in any of the following circumstances:

(a) whenever the beneficiary was under an incapacity at the time of the consent or of the act or omission;

(b) whenever the beneficiary at the time consent was given did not know of his rights and of the material facts that the trustee knew or should have known and that the



1 trustee did not reasonably believe that the beneficiary  
2 knew; or

3 (c) whenever the consent of the beneficiary was  
4 induced by improper conduct of the trustee.

5 (3) Whenever the trustee has an interest in the  
6 transaction adverse to the interest of the beneficiary, the  
7 consent of the beneficiary does not preclude the beneficiary  
8 from holding the trustee liable for a breach of trust under  
9 any of the circumstances described in subsection (2) or  
10 whenever the transaction to which the beneficiary consented  
11 was not fair and reasonable to the beneficiary.

12 NEW SECTION. Section 153. Discharge of trustee's  
13 liability by release or contract. (1) Except as provided in  
14 subsection (2), a beneficiary may be precluded from holding  
15 the trustee liable for a breach of trust by the  
16 beneficiary's release or contract effective to discharge the  
17 trustee's liability to the beneficiary for that breach.

18 (2) A release or contract is not effective to  
19 discharge the trustee's liability for a breach of trust in  
20 any of the following circumstances:

21 (a) whenever the beneficiary was under an incapacity  
22 at the time of making the release or contract;

23 (b) whenever the beneficiary did not know of his  
24 rights and of the material facts:

25 (i) that the trustee knew or reasonably should have

1 known; and

2 (ii) that the trustee did not reasonably believe that  
3 the beneficiary knew;

4 (c) whenever the release or contract of the  
5 beneficiary was induced by improper conduct of the trustee;  
6 or

7 (d) whenever the transaction involved a bargain with  
8 the trustee that was not fair and reasonable.

9 NEW SECTION. Section 164. Discharge of trustee's  
10 liability by subsequent affirmance. (1) Except as provided  
11 in subsection (2), if the trustee, in breach of trust,  
12 enters into a transaction that the beneficiary may at his  
13 option reject or affirm, and the beneficiary affirms the  
14 transaction, the beneficiary may not thereafter reject it  
15 and hold the trustee liable for any loss occurring after the  
16 trustee entered into the transaction.

17 (2) The affirmance of a transaction by the beneficiary  
18 does not preclude the beneficiary from holding a trustee  
19 liable for a breach of trust if, at the time of the  
20 affirmance, any of the following circumstances existed:

21 (a) the beneficiary was under an incapacity;

22 (b) the beneficiary did not know of his rights and of  
23 the material facts:

24 (i) that the trustee knew or reasonably should have  
25 known; and

(ii) that the trustee did not reasonably believe that the beneficiary knew;

(c) the affirmance was induced by improper conduct of the trustee; or

(d) the transaction involved a bargain with the trustee that was not fair and reasonable.

**NEW SECTION. Section 165. Subject matter jurisdiction.** (1) The district court having jurisdiction over the trust pursuant to [sections 1 through 215] has exclusive jurisdiction of proceedings concerning the internal affairs of trusts.

(2) The district court having jurisdiction over the trust pursuant to [sections 1 through 215] has concurrent jurisdiction of the following:

(a) actions and proceedings to determine the existence of trusts;

(b) actions and proceedings by or against creditors or debtors of trusts; and

(c) other actions and proceedings involving trustees and third persons.

**NEW SECTION. Section 166. Full-power court.** In proceedings concerning the internal affairs of trusts commenced pursuant to [sections 1 through 215], the court has all the powers of a district court exercising its general jurisdiction.

**NEW SECTION. Section 167. Principal place of administration of trust.** (1) The principal place of administration of the trust is the usual place where the day-to-day activity of the trust is carried on by the trustee or its representative who is primarily responsible for the administration of the trust.

(2) If the principal place of administration of the trust cannot be determined under subsection (1), it shall be determined as follows:

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

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

**NEW SECTION. Section 168. Jurisdiction over trustees and beneficiaries.** Subject to [section 169]:

(1) by accepting the trusteeship of a trust having its principal place of administration in this state the trustee submits personally to the jurisdiction of the court under [sections 1 through 215]; and

(2) to the extent of their interests in the trust, all beneficiaries of a trust having its principal place of administration in this state are subject to the jurisdiction of the court under [sections 1 through 215].

**NEW SECTION. Section 169.** Basis of jurisdiction over trust, trust property, and trust parties. The court may exercise jurisdiction in proceedings under this division on any basis permitted by Rule 4 of the Rules of Civil Procedure.

**NEW SECTION. Section 170.** Venue. (1) The proper county for commencement of a proceeding pursuant to [sections 165 through 178] is either of the following:

(a) in the case of a living trust, the county where the principal place of administration of the trust is located; or

(b) in the case of a testamentary trust, either the county where the decedent's estate is administered or where the principal place of administration of the trust is located.

(2) If a living trust has no trustee, the proper county for commencement of a proceeding for appointing a trustee is the county where the trust property, or some portion of the trust property, is located.

(3) Except as otherwise provided in subsections (1) and (2), the proper county for commencement of a proceeding

pursuant to [sections 1 through 215] is determined by the rules applicable to civil actions generally.

**NEW SECTION. Section 171.** Jury trial. There is no right to a jury trial in proceedings under [sections 1 through 215] concerning the internal affairs of trusts.

**NEW SECTION. Section 172.** Application of part. This part applies to notice in proceedings commenced pursuant to [sections 1 through 215] or notice otherwise required or permitted by [sections 1 through 215].

**NEW SECTION. Section 173.** Manner of mailing -- when mailing complete. (1) If a notice or other paper is required or permitted to be mailed, it shall be sent by first-class mail.

(2) Mailing is complete when the notice or other paper is deposited in the mail, postage prepaid, addressed to the person to whom it is mailed.

**NEW SECTION. Section 174.** Personal delivery instead of mailing. If a notice or other paper is required or permitted to be mailed, it may be delivered personally to the person to whom it is required or permitted to be mailed.

**NEW SECTION. Section 175.** Proof of giving notice -- conclusiveness of order. (1) Proof of the giving of notice shall be made at or before the hearing to the satisfaction of the court.

(2) If it appears to the satisfaction of the court

1 that notice has been regularly given or that the party  
2 entitled to notice has waived, the court shall so find in  
3 its order. When the order becomes final, it is conclusive on  
4 all persons, whether or not in being.

5 NEW SECTION. Section 176. Additional notice. (1) The  
6 court may, on its own motion or on motion of a trustee or  
7 other person interested in the trust, require that further  
8 or additional notice be given at any state of the  
9 proceeding. The court may prescribe the form and method of  
10 the notice to be given.

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

14 NEW SECTION. Section 177. Shortening time. The court  
15 may for good cause shorten the time for giving a notice.

16 NEW SECTION. Section 178. Notice of postponed  
17 hearings. The court may continue or postpone any hearing,  
18 from time to time, in the interest of justice, and no  
19 further notice of the continued or postponed hearing is  
20 required unless otherwise ordered by the court.

21 NEW SECTION. Section 179. Petitioners -- grounds for  
22 petition. (1) Except as provided in [section 68], a trustee  
23 or beneficiary of a trust may petition the court under  
24 [sections 165 through 203] concerning the internal affairs  
25 of the trust or to determine the existence of the trust.

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

4 (a) determining questions of construction of a trust  
5 instrument;

6 (b) determining the existence or nonexistence of any  
7 immunity, power, privilege, duty, or right;

8 (c) determining the validity of a trust provision;

9 (d) ascertaining beneficiaries and determining to whom  
10 property shall pass or be delivered upon final or partial  
11 termination of the trust, to the extent the determination is  
12 not made by the trust instrument;

13 (e) settling the accounts and passing upon the acts of  
14 the trustee, including the exercise of discretionary powers;

15 (f) instructing the trustee;

16 (g) compelling the trustee to report information about  
17 the trust or account to the beneficiary, if:

18 (i) the trustee has failed to submit a requested  
19 report or account within 60 days after written request of  
20 the beneficiary; and

21 (ii) no report or account has been made within 6 months  
22 preceding the request;

23 (h) granting powers to the trustee;

24 (i) fixing or allowing payment of the trustee's  
25 compensation;

1 (j) appointing or removing a trustee;  
 2 (k) accepting the resignation of a trustee;  
 3 (l) compelling redress of a breach of the trust by any  
 4 available remedy;  
 5 (m) approving or directing the modification or  
 6 termination of the trust;  
 7 (n) approving or directing the combination or division  
 8 of trusts;  
 9 (o) amending or conforming the trust instrument in the  
 10 manner required to qualify a decedent's estate for the  
 11 charitable estate tax deduction under federal law, including  
 12 the addition of mandatory governing instrument requirements  
 13 for a charitable remainder trust as required by final  
 14 regulations and rulings of the United States internal  
 15 revenue service, in any case in which all parties interested  
 16 in the trust have submitted written agreement to the  
 17 proposed changes or written disclaimer of interest;  
 18 (p) authorizing or directing transfer of a trust or  
 19 trust property to or from another jurisdiction;  
 20 (q) directing transfer of a testamentary trust subject  
 21 to continuing court jurisdiction from one county to another;  
 22 (r) approving removal of a testamentary trust from  
 23 continuing court jurisdiction; or  
 24 (s) reforming or excusing compliance with the  
 25 governing instrument of an organization pursuant to [section

1 104].

2 **NEW SECTION. Section 180. Commencement of proceeding.**

3 (1) A proceeding under [sections 165 through 203] is  
 4 commenced by filing a verified petition stating facts  
 5 showing that the petition is authorized under this chapter  
 6 and the grounds of the petition.

7 (2) When a petition that requires a hearing is filed  
 8 with the court clerk, the clerk shall set the matter for  
 9 hearing.

10 **NEW SECTION. Section 181. Dismissal of petition.** The  
 11 court may dismiss a petition if it appears that the  
 12 proceeding is not reasonably necessary for the protection of  
 13 the interests of the trustee or beneficiary.

14 **NEW SECTION. Section 182. Notice.** At least 14 days  
 15 before the time set for the hearing on the petition, the  
 16 petitioner shall cause notice of the time and place of  
 17 hearing to be mailed to any of the following persons who are  
 18 not petitioners:

19 (1) all trustees;  
 20 (2) all beneficiaries who are entitled to notice; and  
 21 (3) the attorney general, if the petition is related  
 22 to a charitable trust subject to the jurisdiction of the  
 23 attorney general, unless the attorney general waives notice.

24 **NEW SECTION. Section 183. Request for special notice.**

25 (1) If proceedings involving a trust are pending, a

beneficiary of the trust may, in person or by attorney, serve on the trustee or the trustee's attorney and file with the court clerk where the proceedings are pending a written request stating that the beneficiary desires special notice of the filing of petitions in the proceeding relating to any or all of the purposes described in [section 179] and giving an address for receiving notice by mail. Proof of service of the request on the trustee shall be filed with the court clerk when the request is filed.

(2) Except as provided in subsection (3), after serving and filing a request and proof of service pursuant to subsection (1), the beneficiary is entitled to notice pursuant to [section 182].

(3) A request for special notice made by a beneficiary whose right to notice is restricted by [section 70] is not effective.

**NEW SECTION. Section 184.** Request for copy of petition. If a trustee or beneficiary has served and filed either a notice of appearance, in person or by counsel, directed to the petitioner or the petitioner's counsel in connection with a particular petition and proceeding or a written request for a copy of the petition, and has given an address to which notice or a copy of the petition may be mailed or delivered, the petitioner shall cause a copy of the petition to be mailed to that person within 5 days after

service of the notice of appearance or receipt of the request.

**NEW SECTION. Section 185.** Authority to make necessary orders -- temporary trustee. The court in its discretion may make any orders and take any other action necessary or proper to dispose of the matters presented by the petition, including appointment of a temporary trustee to administer the trust in whole or in part.

**NEW SECTION. Section 186.** Appeal. An appeal may be taken from the grant or denial of any final order made under [sections 165 through 203], except the following:

(1) compelling the trustee to submit an account or report acts as trustee to a beneficiary pursuant to [section 179(2)(g)];

(2) accepting the resignation of a trustee pursuant to [section 179(2)(k)]; or

(3) approving removal of a testamentary trust from continuing court jurisdiction pursuant to [section 179(2)(r)].

**NEW SECTION. Section 187.** Appointment of guardian ad litem. (1) The court may, on its own motion or on request of a trustee or other person interested in the trust, appoint a guardian ad litem at any stage of a proceeding concerning the trust to represent the interest of any of the following persons, if the court determines that representation of the

1 interest otherwise would be inadequate:

- 2 (a) a minor;
- 3 (b) an incapacitated person;
- 4 (c) an unborn person;
- 5 (d) an unascertained person;
- 6 (e) a person whose identity or address is unknown; or
- 7 (f) a designated class of persons who are not
- 8 ascertained or are not in being.

9 (2) If not precluded by a conflict of interest, a  
10 guardian ad litem may be appointed to represent several  
11 persons or interests.

12 (3) The reasonable expenses of the guardian ad litem,  
13 including compensation and attorney's fees, shall be  
14 determined by the court and paid as the court orders, either  
15 out of trust property or by the petitioner.

16 (4) If no guardian ad litem is appointed, an unborn  
17 person or an unascertained person is bound by an order to  
18 the extent his or her interest is adequately represented by  
19 another party having a substantially identical interest in  
20 the proceeding.

21 NEW SECTION. Section 188. Intermittent judicial  
22 intervention in trust administration. The administration of  
23 trusts is intended to proceed expeditiously and free of  
24 judicial intervention, subject to the jurisdiction of the  
25 court.

1 NEW SECTION. Section 189. Enforcement of  
2 beneficiary's rights under charitable trust by attorney  
3 general. In a case involving a charitable trust subject to  
4 the jurisdiction of the attorney general, the attorney  
5 general may petition under [sections 165 through 203].

6 NEW SECTION. Section 190. Application of part. (1)  
7 [Sections 190 through 195] apply to all of the following:

8 (a) a trust that is subject to [sections 1 through  
9 215]; and

10 (b) any other trust to which the provisions of  
11 [sections 165 through 203] are made applicable by statute or  
12 trust instrument.

13 (2) [Sections 190 through 195] do not prevent the  
14 transfer of the place of administration of a trust or of  
15 trust property to another jurisdiction by any other  
16 available means.

17 NEW SECTION. Section 191. Transfer of place of  
18 administration or property from Montana. (1) The court may  
19 make an order for the transfer of the place of  
20 administration of a trust or the transfer of some or all of  
21 the trust property to a jurisdiction outside this state as  
22 provided in [sections 165 through 203].

23 (2) Except as otherwise provided in [sections 190  
24 through 195], proceedings under [sections 165 through 203]  
25 are governed by [sections 190 through 195].

**NEW SECTION. Section 192. Contents of petition.** The

petition for transfer shall set forth all of the following:

(1) the names and places of residence of the following:

(a) the trustee administering the trust in this state; and

(b) the trustee, including any domiciliary trustee, who will administer the trust or trust property in the other jurisdiction;

(2) the names, ages, and places of residence of the living beneficiaries, as far as known to the petitioner;

(3) whether the trustee who will administer the trust in the other jurisdiction has agreed to accept the trust. If so, the acceptance or a copy shall be attached as an exhibit to the petition or otherwise filed with the court;

(4) a general statement of the qualifications of the trustee who will administer the trust in the other jurisdiction and the amount of fiduciary bond, if any. If the trustee is an individual, the statement shall include the trustee's age;

(5) a general statement of the nature and value of the property of any trust of the same trustor being administered in the other jurisdiction by the trustee who will administer the trust in the other jurisdiction;

(6) the name of the court, if any, having jurisdiction

of the trustee in the other jurisdiction or of its accounts or in which a proceeding may be had with respect to administration of the trust or the trustee's accounts;

(7) a statement of the character, condition, location, and value of the trust property sought to be transferred;

(8) whether there is any pending civil action in this state against the trustee arising out of the administration of the trust sought to be transferred; and

(9) a statement of the reasons for the transfer.

**NEW SECTION. Section 193. Notice and hearing.** (1) At

least 14 days before the time set for the hearing on the petition, the petitioner shall cause notice of the time and place of the hearing to be mailed to each of the persons named in the petition at their respective addresses as stated in the petition.

(2) Any person interested in the trust, as trustee, beneficiary, or otherwise, may appear and file written grounds in opposition to the petition.

**NEW SECTION. Section 194. Order granting transfer.**

The court may, in its discretion, grant the petition and order the trustee to transfer the trust property or to transfer the place of administration of the trust to the other jurisdiction if, after hearing, all of the following appear to the court:

(1) the transfer of the trust property to a trustee in



1 another jurisdiction, or the transfer of the place of  
2 administration of the trust to another jurisdiction, will  
3 promote the best interests of the trust and those interested  
4 in it, taking into account the interest in the economical  
5 and convenient administration of the trust;

6 (2) the transfer will not violate the trust  
7 instrument; and

8 (3) any new trustee to whom the trust property is to  
9 be transferred is qualified, willing, and able to administer  
10 the trust or trust property under the trust instrument.

11 NEW SECTION. Section 195. Manner of transfer --  
12 discharge of trustee. If a transfer is ordered under this  
13 chapter, the court may direct the manner of transfer and  
14 impose terms and conditions as may be just, including, but  
15 not limited to, a requirement for the substitution of a  
16 successor trustee in any pending litigation in this state.  
17 The delivery of property in accordance with the order of the  
18 court is a discharge of the trustee in relation to all  
19 property embraced in the order.

20 NEW SECTION. Section 196. Application. (1) [Sections  
21 196 through 203] apply to a trust, or portion thereof,  
22 administered in a jurisdiction outside this state.

23 (2) [Sections 196 through 203] do not prevent the  
24 transfer of the place of administration of a trust or trust  
25 property to this state by any other available means.

1 NEW SECTION. Section 197. Transfer of place of  
2 administration or property to Montana. (1) The court may  
3 make an order accepting the transfer of the place of  
4 administration of a trust from another jurisdiction to this  
5 state or the transfer of some or all of the trust property  
6 in another jurisdiction to a trustee in this state as  
7 provided in [sections 196 through 203].

8 (2) Except as otherwise provided in [sections 196  
9 through 203], proceedings under [sections 196 through 203]  
10 are governed by this chapter.

11 NEW SECTION. Section 198. Venue. (1) If the petition  
12 requests that a resident of this state be appointed trustee,  
13 the petition shall be filed in the court of the county where  
14 the proposed principal place of administration of the trust  
15 pursuant to [section 167] is located.

16 (2) If the petition requests that only a nonresident  
17 of this state be appointed trustee, the petition shall be  
18 filed in the court of the county where either:

- 19 (a) any beneficiary resides; or  
20 (b) a substantial portion of the trust property to be  
21 transferred is located or will be located.

22 NEW SECTION. Section 199. Contents of petition. The  
23 petition for transfer shall set forth all of the following:  
24 (1) the names and places of residence of the  
25 following:

1 (a) the trustee administering the trust in the other  
2 jurisdiction; and

3 (b) the proposed trustee to whom administration of the  
4 trust or trust property will be transferred;

5 (2) the names, ages, and places of residence of all  
6 living beneficiaries, as far as known to the petitioner;

7 (3) whether administration of the trust has been  
8 subject to supervision in a jurisdiction outside this state.  
9 If so, the petition shall state whether a petition or  
10 appropriate request for transfer of place of administration  
11 of the trust or trust property to this state has been filed,  
12 if necessary, with the court in the other jurisdiction, and  
13 the status of the petition or request.

14 (4) whether the trustee proposed to administer the  
15 trust in this state has agreed to accept the trust in this  
16 state. If the trustee has agreed, the acceptance shall be  
17 attached as an exhibit to the petition or otherwise filed  
18 with the court.

19 (5) a general statement of the qualifications of the  
20 trustee proposed to administer the trust in this state and  
21 the amount of any bond to be requested. If the trustee is an  
22 individual, the statement shall include the trustee's age.

23 (6) a copy of the trust instrument or a statement of  
24 the terms of the trust instrument in effect at the time the  
25 petition is filed, including all amendments thereto;

1 (7) a statement of the character, condition, location,  
2 and value of the trust property sought to be transferred;  
3 and

4 (8) a statement of the reasons for the transfer.

5 NEW SECTION. Section 200. Notice and hearing. (1) At  
6 least 14 days before the time set for the hearing on the  
7 petition, the petitioner shall cause notice of the time and  
8 place of the hearing to be mailed to each of the persons  
9 named in the petition at their respective addresses as  
10 stated in the petition.

11 (2) Any person interested in the trust, as trustee,  
12 beneficiary, or otherwise, may appear and file written  
13 grounds in opposition to the petition.

14 NEW SECTION. Section 201. Order accepting transfer  
15 and appointing trustee. (1) The court may, in its  
16 discretion, grant the petition and issue an order accepting  
17 transfer of trust property or the place of administration of  
18 the trust to this state and appoint a trustee to administer  
19 the trust in this state, if, after hearing, all of the  
20 following appear to the court:

21 (a) the transfer of the trust property to a trustee in  
22 this state, or the transfer of the place of administration  
23 of the trust to this state, will promote the best interests  
24 of the trust and those interested in it, taking into account  
25 the interest in the economical and convenient administration

1 of the trust;

2 (b) the transfer will not violate the trust  
3 instrument;

4 (c) the trustee appointed by the court to administer  
5 the trust in this state, and to whom the trust property is  
6 to be transferred, is qualified, willing, and able to  
7 administer the trust or trust property under the trust  
8 instrument; and

9 (d) the proper court in the other jurisdiction has  
10 approved the transfer if approval is necessary under the law  
11 of the other jurisdiction.

12 (2) If the court grants the petition under subsection  
13 (1), the court shall require the trustee to give a bond, if  
14 necessary under the law of the other jurisdiction or of this  
15 state, and may require bond as provided in [section 49].

16 NEW SECTION. Section 202. Conditional order accepting  
17 transfer. If appropriate to facilitate transfer of the trust  
18 property or the place of administration of a trust to this  
19 state, the court may issue a conditional order appointing a  
20 trustee to administer the trust in this state and indicating  
21 that transfer to this state will be accepted if transfer is  
22 approved by the proper court of the other jurisdiction.

23 NEW SECTION. Section 203. Administration of  
24 transferred trust. A trust transferred to this state  
25 pursuant to [sections 165 through 203] shall be administered

1 in the same manner as a trust of that type created in this  
2 state.

3 NEW SECTION. Section 204. Personal liability of  
4 trustee to third persons on contracts. (1) Unless otherwise  
5 provided in the contract or in [sections 165 through 203],  
6 a trustee is not personally liable on a contract properly  
7 entered into in the trustee's fiduciary capacity in the  
8 course of administration of the trust unless the trustee  
9 fails to reveal the trustee's representative capacity or  
10 identify the trust in the contract.

11 (2) The personal liability of a trustee on a contract  
12 entered into before October 1, 1989, is governed by prior  
13 law and not by this section.

14 NEW SECTION. Section 205. Personal liability of  
15 trustee arising from ownership or control of trust estate.  
16 A trustee is personally liable for obligations arising from  
17 ownership or control of trust property only if the trustee  
18 is personally at fault.

19 NEW SECTION. Section 206. Personal liability of  
20 trustee for torts. A trustee is personally liable for torts  
21 committed in the course of administration of the trust only  
22 if the trustee is personally at fault.

23 NEW SECTION. Section 207. Liability of dissenting  
24 cotrustee to third persons. (1) A cotrustee who does not  
25 join in exercising a power held by three or more cotrustees

1 is not liable to third persons for the consequences of the  
2 exercise of the power.

3 (2) A dissenting cotrustee who joins in an action at  
4 the direction of the majority cotrustees is not liable to  
5 third persons for the action if the dissenting cotrustee  
6 expresses the dissent in writing to any other cotrustee at  
7 or before the time the action is taken.

8 (3) This section does not excuse a cotrustee from  
9 liability for failure to discharge the cotrustee's duties as  
10 a trustee.

11 NEW SECTION. Section 208. Assertion of claims against  
12 trust. A claim based on a contract entered into by a trustee  
13 in the trustee's representative capacity, on an obligation  
14 arising from ownership or control of trust property, or on a  
15 tort committed in the course of administration of the trust  
16 may be asserted against the trust by proceeding against the  
17 trustee in the trustee's representative capacity, whether or  
18 not the trustee is personally liable on the claim.

19 NEW SECTION. Section 209. Liability as between  
20 trustee and trust estate. The question of liability as  
21 between the trust estate and the trustee personally may be  
22 determined in a proceeding under [section 179].

23 NEW SECTION. Section 210. Protection of third person  
24 dealing with trustee. With respect to a third person dealing  
25 with a trustee or assisting a trustee in the conduct of a

1 transaction, if the third person acts for a valuable  
2 consideration and without actual knowledge that the trustee  
3 is exceeding the trustee's powers or improperly exercising  
4 them:

5 (1) the third person is not bound to inquire whether  
6 the trustee has power to act or is properly exercising a  
7 power and may assume without inquiry the existence of a  
8 trust power and its proper exercise; and

9 (2) the third person is fully protected in dealing  
10 with or assisting the trustee just as if the trustee has and  
11 is properly exercising the power the trustee purports to  
12 exercise.

13 NEW SECTION. Section 211. Application of property  
14 delivered to trustee by third person. A third person is not  
15 bound to ensure the proper application of trust property  
16 paid or delivered to the trustee.

17 NEW SECTION. Section 212. Protection of third person  
18 dealing with former trustee. If a third person acting for a  
19 valuable consideration enters into a transaction with a  
20 former trustee without knowledge that the person is no  
21 longer a trustee, the third person is fully protected just  
22 as if the former trustee were still a trustee.

23 NEW SECTION. Section 213. Effects on real property  
24 transactions. (1) This section relates only to conveyances  
25 of real property to or from a trust, and supplements, but

1 does not modify other substantive provisions of [sections 1  
2 through 215] relating to the creation or validity of trusts.  
3 This section does not affect conveyances recorded prior to  
4 October 1, 1989.

5 (2) Except as otherwise provided in [sections 1  
6 through 215], a conveyance of real property to a trustee  
7 designated as such in the conveyance vests the whole estate  
8 conveyed in the trustee, subject only to the trustee's  
9 duties. The beneficiaries of the trust take no estate or  
10 interest in the real property, but may determine or enforce  
11 the terms of the trust as provided in [sections 1 through  
12 215].

13 (3) An instrument creating or amending a trust need  
14 not be recorded, but may be if properly acknowledged.

15 (4) If there is no clear reference to or designation  
16 of a grantee as trustee in a conveyance (nor in a separately  
17 recorded instrument recorded in the same county as the  
18 conveyance and describing the same property as described in  
19 the conveyance), the conveyance shall be considered to be  
20 absolute to the grantee, in favor of purchasers or  
21 encumbrancers from the grantee, who were without actual  
22 knowledge and who acted for a valuable consideration,  
23 despite any valid trust which may exist.

24 (5) Unless limitations upon a trustee's power or  
25 authority are set forth in the recorded conveyance of real

1 property to the trustee or in a separate trust instrument  
2 (or portion thereof, or abstract thereof) recorded in the  
3 same county, there are no limitations upon the trustee's  
4 power or authority to convey or encumber the real property  
5 in favor of third persons who were without actual knowledge  
6 and who acted for a valuable consideration. A separate trust  
7 instrument incorporated by reference in a conveyance to a  
8 trustee cannot limit the trustee's power or authority to  
9 convey or encumber unless the limitations are set forth in  
10 the trust instrument (or portion thereof or abstract  
11 thereof) which is also recorded in the county where the real  
12 property is located. An amendment to a recorded trust  
13 instrument may not affect the power or authority of a  
14 trustee to convey or encumber unless it is also recorded in  
15 the same place.

16 (6) A subsequent conveyance from a person designated  
17 in the original conveyance as trustee (or from his successor  
18 trustee) conveys the whole estate vested in the trustee,  
19 except as limited by the terms of the conveyance. The  
20 identity of any successor trustee may be established by a  
21 recorded affidavit of the successor trustee specifying his  
22 name and address and the date and circumstances of his  
23 succession, and confirming that he is currently lawfully  
24 serving in such capacity.

25 (7) In an action or proceeding by a third person

1 involving the real property granted to a trustee, the person  
 2 designated as trustee in the original conveyance, or the  
 3 successor trustee as established in subsection (6), or, if  
 4 none, the person then actually serving as trustee, or, if  
 5 none, any beneficiary designated by the court to represent  
 6 the interests of the beneficiaries, shall be considered the  
 7 only necessary representative of the trust and of all  
 8 persons with an interest therein. A judgment is binding upon  
 9 and conclusive against the trust and all persons interested  
 10 therein as to all matters finally adjudicated in the  
 11 judgment.

12 NEW SECTION. **Section 214.** Creditor's rights against  
 13 revocable trust during trustor's lifetime. If the trustor  
 14 retains the power to revoke the trust in whole or in part,  
 15 the trust property is subject to the claims of creditors of  
 16 the trustor to the extent of the power of revocation during  
 17 the lifetime of the trustor.

18 NEW SECTION. **Section 215.** Creditor's rights against  
 19 revocable trust after trustor's death. Upon the death of a  
 20 trustor who had retained the power to revoke the trust in  
 21 whole or in part, the property that was subject to the power  
 22 of revocation at the time of the trustor's death is subject  
 23 to the claims of creditors of the decedent trustor's estate  
 24 and to the expenses of administration of the estate to the  
 25 extent that the decedent trustor's estate is inadequate to

1 satisfy those claims and expenses.

2 **Section 216.** Section 2-2-103, MCA, is amended to read:

3 "2-2-103. **Public trust.** (1) The holding of public  
 4 office or employment is a public trust, created by the  
 5 confidence which the electorate reposes in the integrity of  
 6 public officers, legislators, and employees. A public  
 7 officer, legislator, or employee shall carry out his duties  
 8 for the benefit of the people of the state.

9 (2) A public officer, legislator, or employee whose  
 10 conduct departs from his fiduciary duty is liable to the  
 11 people of the state as a trustee of property, is liable to a  
 12 beneficiary under ~~72-20-203(2)~~ [section 77], and shall  
 13 suffer such other liabilities as a private fiduciary would  
 14 suffer for abuse of his trust. The county attorney of the  
 15 county where the trust is violated may bring appropriate  
 16 judicial proceedings on behalf of the people. Any moneys  
 17 collected in such actions shall be paid to the general fund  
 18 of the aggrieved agency.

19 (3) The following sections set forth various rules of  
 20 conduct, the transgression of any of which is, as such, a  
 21 violation of fiduciary duty, and various ethical principles,  
 22 the transgression of any of which is not, as such, a  
 23 violation of fiduciary duty."

24 **Section 217.** Section 31-2-209, MCA, is amended to  
 25 read:

1       **"31-2-209. Assignment -- when void.** An assignment for  
2 the benefit of creditors is void against any creditor of the  
3 assignor not assenting thereto in the following cases:

4       (1) if it gives a preference dependent upon any  
5 condition or contingency or with any power of revocation  
6 reserved;

7       (2) if it tends to coerce any creditor to release or  
8 compromise his demand;

9       (3) if it provides for the payment of any claim known  
10 by the assignor to be false or fraudulent or for the payment  
11 of more upon any claim than is known to be justly due from  
12 the assignor;

13       (4) if it reserves any interest in the assigned  
14 property or in any part thereof to the assignor or for his  
15 benefit, before all existing debts are paid;

16       (5) if it confers upon the assignee any power which,  
17 if exercised, might prevent or delay the immediate  
18 conversion of the assigned property to the purposes of the  
19 trust;

20       (6) if it exempts him from liability for neglect of  
21 duty or misconduct;

22       (7) if it violates ~~72-20-203(1)~~ [section 77]."

23       **Section 218.** Section 70-20-101, MCA, is amended to  
24 read:

25       **"70-20-101. Transfer to be in writing -- statute of**

1       **frauds.** No estate or interest in real property, other than  
2 an estate at will or for a term not exceeding 1 year, ~~or any~~  
3 ~~trust--over-or-power-concerning-it-or-in-any-manner-relating~~  
4 ~~thereto~~ can be created, granted, assigned, surrendered, or  
5 declared otherwise than by operation of law or a conveyance  
6 or other instrument in writing, subscribed by the party  
7 creating, granting, assigning, surrendering, or declaring it  
8 or by his lawful agent thereunto authorized by writing."

9       **Section 219.** Section 82-1-304, MCA, is amended to  
10 read:

11       **"82-1-304. Administration of the trust.** (1) The  
12 administration of the trust shall comply with the  
13 appropriate provisions regulating trusts contained in Title  
14 72.

15       (2) No trustee or attorney fees may be paid from the  
16 trust proceeds.

17       (3) All bonuses, rental payments, royalties, and other  
18 income shall be paid to the trustee until the trust is  
19 terminated and notice of its termination given to all  
20 interested parties. The trustee shall distribute all money  
21 held in the trust to the person or persons entitled to it  
22 upon the order of the district court.

23       (4) A trust in favor of unlocatable owners shall be in  
24 force until the unlocatable owners of the mineral interest  
25 in question have successfully claimed the share of funds

1 held in trust and filed the notice provided in 82-1-306.

2 (5) The trustee shall invest funds under his  
3 management in the manner of a prudent man, as defined-in  
4 72-21-104 provided in [section 89]. Fifty percent of the  
5 interest earned on each trust shall be credited to the  
6 general fund of the county in which the mineral interest is  
7 located to defray the costs of administration.

8 (6) Funds held in the trusts are subject to the  
9 provisions governing abandoned property contained in Title  
10 70, chapter 9."

11 NEW SECTION. Section 220. Repealer. Sections  
12 72-12-101 through 72-12-103, Title 72, chapters 20 through  
13 25, sections 72-27-101 and 72-27-102, MCA, are repealed.

14 NEW SECTION. Section 221. Codification instruction.  
15 [Sections 1 through 215] are intended to be codified as an  
16 integral part of Title 72 and the provisions of Title 72  
17 apply to [sections 1 through 215].

-End-



## 1 SENATE BILL NO. 333

2 INTRODUCED BY MAZUREK, CRIPPEN, BISHOP

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE  
5 LAWS RELATING TO TRUSTS AND TRUSTEES; AMENDING SECTIONS  
6 2-2-103, 31-2-209, 70-20-101, AND 82-1-304, MCA; AND  
7 REPEALING SECTIONS 72-12-101 THROUGH 72-12-103, TITLE 72,  
8 CHAPTERS 20 THROUGH 25, AND SECTIONS 72-27-101 AND  
9 72-27-102, MCA."

10  
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:12 NEW SECTION. Section 1. Short title. [Sections 1  
13 through 215] shall be known and may be cited as the "Trust  
14 Code".15 NEW SECTION. Section 2. General rule concerning  
16 application of trust code. Except as otherwise provided by  
17 statute:18 (1) After September 30, 1989, [sections 1 through 215]  
19 apply to all trusts regardless of when they were created,  
20 unless in the opinion of the court, application of a  
21 particular provision of [sections 1 through 215] would  
22 substantially interfere with the rights of the parties and  
23 other interested persons, in which case the particular  
24 provision of [sections 1 through 215] does not apply and  
25 prior law applies.

There is no change on SB 333 and will not  
be reprinted. Please refer to second  
reading (yellow) for complete text.

COMMITTEE OF THE WHOLE AMENDMENT  
SENATE BILL 333  
Representative John Mercer

March 9, 1989 1:43 pm  
Page 1 of 1

Mr. Chairman: I move to amend SENATE BILL 333 (third reading copy -- blue).

Signed: MERCER  
Representative John Mercer

And, that such amendments to SENATE BILL 333 read as follows:

1. Page 48, line 15.

Following: "NEW SECTION. Section 113.

Strike: "Investments" on page 48, line 15 through "obligations" on page 49, line 3

Insert: " If the personal representative is authorized to invest funds in United States obligations, he may invest in these obligations either directly or in the form of securities of or other interests in an open-end or closed-end management type investment company or investment trust registered under the Investment Company Act of 1940 (15 U.S.C. 80 a-1 through 80 a-64), as amended if:

(a) the portfolio of the investment company or investment trust is limited to United States government obligations and repurchase agreements fully collateralized by United States government obligations; and

(b) the investment company or investment trust takes delivery of the collateral for any repurchase agreement either directly or through an authorized custodian"

ADOPT

REJECT

HOUSE

551343CW.HBV

SB 333

## 1 SENATE BILL NO. 333

2 INTRODUCED BY MAZUREK, CRIPPEN, BISHOP

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE  
5 LAWS RELATING TO TRUSTS AND TRUSTEES; AMENDING SECTIONS  
6 2-2-103, 31-2-209, 70-20-101, AND 82-1-304, MCA; AND  
7 REPEALING SECTIONS 72-12-101 THROUGH 72-12-103, TITLE 72,  
8 CHAPTERS 20 THROUGH 25, AND SECTIONS 72-27-101 AND  
9 72-27-102, MCA."

10  
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12 NEW SECTION. Section 1. Short title. [Sections 1  
13 through 215] shall be known and may be cited as the "Trust  
14 Code".

15 NEW SECTION. Section 2. General rule concerning  
16 application of trust code. Except as otherwise provided by  
17 statute:

18 (1) After September 30, 1989, [sections 1 through 215]  
19 apply to all trusts regardless of when they were created,  
20 unless in the opinion of the court, application of a  
21 particular provision of [sections 1 through 215] would  
22 substantially interfere with the rights of the parties and  
23 other interested persons, in which case the particular  
24 provision of [sections 1 through 215] does not apply and  
25 prior law applies.

1 (2) After September 30, 1989, [sections 1 through 215]  
2 apply to all proceedings concerning trusts whenever  
3 commenced, unless in the opinion of the court, application  
4 of a particular provision of [sections 1 through 215] would  
5 substantially interfere with the effective conduct of the  
6 proceedings or the rights of the parties and other  
7 interested persons, in which case the particular provision  
8 of [sections 1 through 215] does not apply and prior law  
9 applies.

10 NEW SECTION. Section 3. Common law as law of state.  
11 Except to the extent that the common law rules governing  
12 trusts are modified by statute, the common law as to trusts  
13 is the law of this state.

14 NEW SECTION. Section 4. Constructive and resulting  
15 trusts not affected. Other than [sections 19 through 23],  
16 nothing in [sections 1 through 215] affects the law relating  
17 to constructive or resulting trusts.

18 NEW SECTION. Section 5. Application of code to  
19 charitable trusts. Unless otherwise provided by statute,  
20 [sections 1 through 215] apply to charitable trusts that are  
21 subject to the jurisdiction of the attorney general.

22 NEW SECTION. Section 6. Laws affecting construction  
23 and operation of wills apply to trusts. (1) Title 72,  
24 chapter 2, part 5 and 72-3-901 apply to the construction and  
25 operation of trusts, except as provided in subsection (2).

1 (2) This section does not apply to any trust if its  
2 terms expressly or by necessary implication make this  
3 section inapplicable to it.

4 (3) For purposes of [sections 1 through 215],  
5 references in Title 72, chapter 2, part 5 and in 72-3-901 to  
6 a "testator" refer to the trustor, references to a "will"  
7 refer to a trust, references to a "devisee" refer to a trust  
8 beneficiary, and references to a "devise" refer to a trust  
9 distribution.

10 **NEW SECTION. Section 7. Definitions.** As used in  
11 [sections 1 through 215] unless the context requires  
12 otherwise the following definitions apply:

13 (1) "Beneficiary" means a person who has any present  
14 or future interest, vested or contingent, and also includes  
15 the owner of an interest by assignment or other transfer  
16 and, as it relates to a charitable trust, includes any  
17 person entitled to enforce the trust.

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

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

23 (4) "Trust" when not qualified by the word "resulting"  
24 or "constructive", includes any express trust, private or  
25 charitable, with additions thereto, wherever and however

1 created. It also includes a trust created or determined by  
2 judgment or decree under which the trust is to be  
3 administered in the manner of an express trust. The term  
4 does not include conservatorships, personal representatives,  
5 custodial arrangements pursuant to chapter 26 of this title,  
6 business trusts providing for certificates to be issued to  
7 beneficiaries, common trust funds, voting trusts, security  
8 arrangements, liquidation trusts, and trusts for the primary  
9 purpose of paying debts, dividends, interest, salaries,  
10 wages, profits, pensions, or employee benefits of any kind  
11 and any arrangement under which a person is nominee or  
12 escrowee for another.

13 (5) "Trustee" means the person holding property in  
14 trust. The term includes an original, additional, or  
15 successor trustee, whether or not appointed or confirmed by  
16 a court.

17 (6) "Trustor" means the person who creates a trust.

18 (7) "Trust company" means an entity which has  
19 qualified to engage in and conduct a trust business in this  
20 state.

21 (8) "Trust property" means the property held in trust.

22 **NEW SECTION. Section 8. Reference to statutes --**  
23 **amendments and additions.** Whenever a reference is made to  
24 any portion of [sections 1 through 215] or to any other law,  
25 the reference applies to all amendments and additions made.

**NEW SECTION. Section 9. Methods of creating trust.**

Subject to other provisions of [sections 1 through 72], a trust may be created by any of the following methods:

- (1) a declaration by the owner of property that the owner holds the property as trustee;
- (2) a transfer of property by the owner during the owner's lifetime to another person as trustee;
- (3) a testamentary transfer of property by the owner to another person as trustee;
- (4) an exercise of a power of appointment to another person as trustee; or
- (5) an enforceable promise to create a trust.

**NEW SECTION. Section 10. Intention to create trust.**

A trust is created only if the trustor properly manifests an intention to create a trust.

**NEW SECTION. Section 11. Trust property. (1) A trust is created only if there is trust property.**

(2) The requirement of subsection (1) may be satisfied if the trust (or its trustee) is designated to be beneficiary of the proceeds of an insurance contract, an annuity contract, an employee benefit plan, an individual retirement account, or similar device, even though the designation may be revoked.

**NEW SECTION. Section 12. Trust purpose. A trust may**

be created for any purpose that is not illegal or against

public policy.

**NEW SECTION. Section 13. Trust for indefinite or general purposes.** A trust created for an indefinite or general purpose is not invalid for that reason if it can be determined with reasonable certainty that a particular use of the trust property comes within that purpose.

**NEW SECTION. Section 14. Designation of beneficiary.**

(1) A trust, other than a charitable trust, is created only if there is a beneficiary.

(2) The requirement of subsection (1) is satisfied if the trust instrument provides for either of the following:

(a) a beneficiary or class of beneficiaries that is ascertainable with reasonable certainty or that is sufficiently described so it can be determined that some person meets the description or is within the class; or

(b) a grant of power to the trustee or some other person to select the beneficiaries based on a standard or in the discretion of the trustee or other person.

**NEW SECTION. Section 15. Designation of trust or trustee as beneficiary. (1) A trust or trustee may be designated as the beneficiary of the proceeds of an insurance contract, an annuity contract, an employee benefit plan, an individual retirement account, or similar device if the designation is made in accordance with the contract, plan, account, or device.**

1       (2) Subsection (1) applies even though the trust or  
2 trustee is named or to be named by will or trust and whether  
3 or not the will or trust is in existence at the time of the  
4 designation.

5       NEW SECTION. Section 16. Statute of frauds. A trust  
6 is not valid unless evidenced by one of the following  
7 methods:

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

10       (2) by a written instrument signed by the trustor, or  
11 by the trustor's agent if authorized in writing to do so; or

12       (3) by operation of law.

13       NEW SECTION. Section 17. Consideration. Consideration  
14 is not required to create a trust, but a promise to create a  
15 trust in the future is enforceable only if the requirements  
16 for an enforceable contract are satisfied.

17       NEW SECTION. Section 18. Exception to doctrine of  
18 merger. If a trust provides for one or more successor  
19 beneficiaries after the death of the trustor, the trust is  
20 not invalid, merged, or terminated in either of the  
21 following circumstances:

22       (1) where there is one trustor who is the sole trustee  
23 and the sole beneficiary during the trustor's lifetime; or

24       (2) where there are two or more trustors, one or more  
25 of whom are trustees, and the beneficial interest in the

1 trust is in one or more of the trustors during the lifetime  
2 of the trustors.

3       NEW SECTION. Section 19. Resulting trust upon failure  
4 of trust. Where the owner of property gratuitously transfers  
5 it and manifests in the trust instrument an intention that  
6 the transferee should hold the property in trust but the  
7 trust fails, the transferee holds the trust estate as a  
8 resulting trust for the transferor or his estate, unless:

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

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

15       NEW SECTION. Section 20. Resulting trust upon full  
16 performance of trust. Where the owner of property  
17 gratuitously transfers it subject to a trust which is  
18 properly declared and which is fully performed without  
19 exhausting the trust estate, the trustee holds the surplus  
20 as a resulting trust for the transferor or his estate,  
21 unless the transferor manifested in the trust instrument an  
22 intention that no resulting trust of the surplus should  
23 arise.

24       NEW SECTION. Section 21. Purchase money resulting  
25 trust. (1) Where a transfer of property is made to one

1 person and the purchase price is paid by another, a  
2 resulting trust arises in favor of the person who paid the  
3 purchase price.

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

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

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

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

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

20 NEW SECTION. Section 22. Constructive trust. A  
21 constructive trust arises when a person holding title to  
22 property is subject to an equitable duty to convey it to  
23 another on the ground that the person holding title would be  
24 unjustly enriched if he were permitted to retain it.

25 NEW SECTION. Section 23. Resulting trusts,

1 constructive trusts -- statute of frauds. Resulting trusts  
2 and constructive trusts are considered to arise by operation  
3 of law and are valid under [section 16(3)].

4 NEW SECTION. Section 24. Restraint on transfer of  
5 income. Except as provided in [section 28], if the trust  
6 instrument provides that a beneficiary's interest is not  
7 subject to voluntary or involuntary transfer, the  
8 beneficiary's interest in income under the trust may not be  
9 transferred and is not subject to enforcement of a money  
10 judgment until paid to the beneficiary.

11 NEW SECTION. Section 25. Restraint on transfer of  
12 principal. (1) Except as provided in subsection (2) and in  
13 [section 28], if the trust instrument provides that a  
14 beneficiary's interest in principal is not subject to  
15 voluntary or involuntary transfer, the beneficiary's  
16 interest in principal may not be transferred and is not  
17 subject to enforcement of a money judgment until paid to the  
18 beneficiary.

19 (2) After an amount of principal has become due and  
20 payable to the beneficiary under the trust instrument, upon  
21 petition to the court by a judgment creditor, the court may  
22 make an order directing the trustee to satisfy the money  
23 judgment out of that principal amount. The court in its  
24 discretion may issue an order directing the trustee to  
25 satisfy all or part of the judgment out of that principal

1 amount.

2 **NEW SECTION. Section 26. Trust for support.** Except as  
3 provided in [section 28], if the trust instrument provides  
4 that the trustee shall pay income or principal or both for  
5 the education or support of a beneficiary, the beneficiary's  
6 interest in income or principal or both under the trust may  
7 not be transferred and is not subject to the enforcement of  
8 a money judgment until paid to the beneficiary.

9 **NEW SECTION. Section 27. Transferee or creditor**  
10 **cannot compel trustee to exercise discretion -- liability of**  
11 **trustee for payment to or for beneficiary.** (1) If the trust  
12 instrument provides that the trustee shall pay to or for the  
13 benefit of a beneficiary so much of the income or principal  
14 or both as the trustee in the trustee's discretion sees fit  
15 to pay, a transferee or creditor of the beneficiary may not  
16 compel the trustee to pay any amount that may be paid only  
17 in the exercise of the trustee's discretion.

18 (2) If the trustee has knowledge of the transfer of  
19 the beneficiary's interest or has been served with process  
20 by a judgment creditor seeking to reach the beneficiary's  
21 interest, and the trustee pays to or for the benefit of the  
22 beneficiary any part of the income or principal that may be  
23 paid only in the exercise of the trustee's discretion, the  
24 trustee is liable to the transferee or creditor to the  
25 extent that the payment to or for the benefit of the

1 beneficiary impairs the right of the transferee or creditor.  
2 This subsection does not apply if the beneficiary's interest  
3 in the trust is subject to a restraint on transfer that is  
4 valid under [section 24 or 25].

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

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

12 **NEW SECTION. Section 28. Where trustor is**  
13 **beneficiary.** (1) If the trustor is a beneficiary of a trust  
14 created by the trustor and the trustor's interest is subject  
15 to a provision restraining the voluntary or involuntary  
16 transfer of the trustor's interest, the restraint is invalid  
17 against transferees or creditors of the trustor. The  
18 invalidity of the restraint on transfer does not affect the  
19 validity of the trust.

20 (2) If the trustor is the beneficiary of a trust  
21 created by the trustor and the trust instrument provides  
22 that the trustee shall pay income or principal or both for  
23 the education or support of the beneficiary or gives the  
24 trustee the discretion to determine the amount of income or  
25 principal or both to be paid to or for the benefit of the



1 trustor, a transferee or creditor of the trustor may reach  
2 the maximum amount that the trustee could pay to or for the  
3 benefit of the trustor under the trust instrument, not  
4 exceeding the amount of the trustor's proportionate  
5 contribution to the trust.

6 NEW SECTION. Section 29. Disclaimer not a transfer.  
7 A disclaimer or renunciation by a beneficiary of all or part  
8 of his interest under a trust shall not be considered a  
9 transfer under [section 24 or 25].

10 NEW SECTION. Section 30. Presumption of revocability.  
11 Unless a trust is expressly made irrevocable by the trust  
12 instrument, the trust is revocable by the trustor. This  
13 section applies only where the trustor is domiciled in this  
14 state when the trust is created, where the trust instrument  
15 is executed in this state, or where the trust instrument  
16 provides that the law of this state governs the trust.

17 NEW SECTION. Section 31. Method of revocation by  
18 trustor. (1) A trust that is revocable by the trustor may be  
19 revoked in whole or in part by any of the following methods:  
20 (a) by compliance with any method of revocation  
21 provided in the trust instrument; or  
22 (b) by a writing (other than a will) signed by the  
23 trustor and delivered to the trustee during the lifetime of  
24 the trustor. If the trust instrument explicitly makes the  
25 method of revocation provided in the trust instrument the

1 exclusive method of revocation, the trust may not be revoked  
2 pursuant to this subsection.

3 (2) A trust may not be revoked by an attorney-in-fact  
4 under a power of attorney unless it is expressly permitted  
5 by the trust instrument.

6 (3) Nothing in this section limits the authority to  
7 modify or terminate a trust pursuant to [section 33 or 34]  
8 in an appropriate case.

9 (4) The manner of revocation of a trust revocable by  
10 the trustor that was created by an instrument executed  
11 before October 1, 1989, is governed by prior law and not by  
12 this section.

13 NEW SECTION. Section 32. Power to revoke includes  
14 power to modify. Unless the trust instrument provides  
15 otherwise, if a trust is revocable by the trustor, the  
16 trustor may modify the trust by the procedure for  
17 revocation.

18 NEW SECTION. Section 33. Modification or termination  
19 of irrevocable trust by all beneficiaries. (1) Except as  
20 provided in subsection (2), if all beneficiaries of an  
21 irrevocable trust consent, they may compel modification or  
22 termination of the trust upon petition to the court.

23 (2) If the continuance of the trust is necessary to  
24 carry out a material purpose of the trust, the trust cannot  
25 be modified or terminated unless the court, in its

1 discretion, determines that the reason for doing so under  
2 the circumstances outweighs the interest in accomplishing a  
3 material purpose of the trust. Under this section the court  
4 does not have discretion to permit termination of a trust  
5 that is subject to a valid restraint on transfer of the  
6 beneficiary's interest as provided in [sections 24 through  
7 29].

8 NEW SECTION. Section 34. Modification or termination  
9 by trustor and all beneficiaries. (1) If the trustor and all  
10 beneficiaries of a trust consent, they may compel the  
11 modification or termination of the trust.

12 (2) If any beneficiary does not consent to the  
13 modification or termination of the trust, upon petition to  
14 the court, the other beneficiaries, with the consent of the  
15 trustor, may compel a modification or a partial termination  
16 of the trust if the interests of the beneficiaries who do  
17 not consent are not substantially impaired.

18 (3) If the trust provides for the disposition of  
19 principal to a class of persons described only as "heirs" or  
20 "next of kin" of the trustor, or using other words that  
21 describe the class of all persons who would take under the  
22 rules of intestacy, the court may limit the class of  
23 beneficiaries whose consent is needed to compel the  
24 modification or termination of the trust to the  
25 beneficiaries who are reasonably likely to take under the

1 circumstances.

2 NEW SECTION. Section 35. Guardian ad litem. For the  
3 purposes of [sections 33 and 34], the consent of a  
4 beneficiary who is legally incapacitated, unascertained, or  
5 unborn may be given in proceedings before the court by a  
6 guardian ad litem, if it would be appropriate to do so. In  
7 this case the guardian ad litem may rely on general family  
8 benefit accruing to living members of the beneficiary's  
9 family as a basis for approving a modification or  
10 termination of the trust.

11 NEW SECTION. Section 36. No conclusive presumption of  
12 fertility. In determining the class of beneficiaries whose  
13 consent is necessary to modify or terminate a trust pursuant  
14 to [section 33 or 34], the presumption of fertility is  
15 rebuttable.

16 NEW SECTION. Section 37. Termination of trusts --  
17 trustee's powers on termination. (1) A trust terminates when  
18 any of the following occurs:

- 19 (a) the term of the trust expires;  
20 (b) the trust purpose is fulfilled;  
21 (c) the trust purpose becomes unlawful;  
22 (d) the trust purpose becomes impossible to fulfill;  
23 or  
24 (e) the trust is revoked.  
25 (2) On termination of the trust, the trustee continues

1 to have the powers reasonably necessary under the  
2 circumstances to wind up the affairs of the trust.

3 **NEW SECTION. Section 38. Trust with uneconomically**  
4 **low principal.** (1) On petition by a trustee or beneficiary,  
5 if the court determines that the fair market value of the  
6 principal of a trust has become so low in relation to the  
7 cost of administration that continuation of the trust under  
8 its existing terms will defeat or substantially impair the  
9 accomplishment of its purposes, the court may, in its  
10 discretion and in a manner that conforms as nearly as  
11 possible to the intention of the trustor, order any of the  
12 following:

- 13 (a) termination of the trust;
- 14 (b) modification of the trust; or
- 15 (c) appointment of a new trustee.

16 (2) Notwithstanding subsection (1), if the trust  
17 principal does not exceed \$20,000 in value, the trustee has  
18 the power to terminate the trust.

19 (3) The existence of a trust provision restraining  
20 transfer of the beneficiary's interest does not prevent  
21 application of this section.

22 **NEW SECTION. Section 39. Modification or termination.**

23 (1) On petition by a trustee or beneficiary, the court may  
24 modify the administrative or dispositive provisions of the  
25 trust or terminate the trust if the continuation of the

1 trust under its terms would defeat or substantially impair  
2 the accomplishment of the purposes of the trust, whether by  
3 the imposition of tax, the allocation of beneficial interest  
4 inconsistent with such purposes, or by other reason. In this  
5 case, if necessary to carry out the purposes of the trust,  
6 the court may order the trustee to do acts that are not  
7 authorized or are forbidden by the trust instrument.

8 (2) The court shall consider a trust provision  
9 restraining transfer of the beneficiary's interest as a  
10 factor in making its decision whether to modify or terminate  
11 the trust, but the court is not precluded from exercising  
12 its discretion to modify or terminate the trust solely  
13 because of a restraint on transfer.

14 **NEW SECTION. Section 40. Disposition of property upon**  
15 **termination.** At the termination of a trust, the trust  
16 property shall be disposed of as follows:

17 (1) In the case of a trust that is revoked by the  
18 trustor, as directed by the trustor.

19 (2) In the case of a trust that is terminated by the  
20 consent of the trustor and all beneficiaries, as agreed by  
21 the trustor and all beneficiaries.

22 (3) In any other case, as provided in the trust  
23 instrument or in a manner directed by the court that  
24 conforms as nearly as possible to the intention of the  
25 trustor as expressed in the trust instrument. If a trust is

1 terminated by the trustee pursuant to [section 38(2)], the  
2 trust property shall be distributed as determined by the  
3 trustee pursuant to this subsection.

4 NEW SECTION. Section 41. Combination of similar  
5 trusts. If the terms of two or more trusts are substantially  
6 similar, on petition by a trustee or beneficiary, the court,  
7 for good cause shown, may combine the trusts if the court  
8 determines that administration as a single trust will not  
9 defeat or substantially impair the accomplishment of the  
10 trust purposes or the interests of the beneficiaries.

11 NEW SECTION. Section 42. Division of trusts. On  
12 petition by a trustee or beneficiary, the court, for good  
13 cause shown, may divide a trust into two or more separate  
14 trusts, if the court determines that dividing the trust will  
15 not defeat or substantially impair the accomplishment of the  
16 trust purposes or the interests of the beneficiaries.

17 NEW SECTION. Section 43. Charitable trust. A  
18 charitable trust, or the charitable portion of a trust,  
19 subjects the trustee to equitable duties to deal with the  
20 trust property for a charitable purpose.

21 NEW SECTION. Section 44. Charitable purposes.  
22 Charitable purposes include:  
23 (1) the relief of poverty;  
24 (2) the advancement of education;  
25 (3) the advancement of religion;

1 (4) the promotion of health;  
2 (5) governmental or municipal purposes; or  
3 (6) other purposes the accomplishment of which are  
4 beneficial to the community.

5 NEW SECTION. Section 45. Enforcement of a charitable  
6 trust. The attorney general, a cotrustee, or a person who  
7 has a special interest in the enforcement of the charitable  
8 trust can maintain a suit for the enforcement of a  
9 charitable trust, but not persons who have no special  
10 interest or the trustor or his heirs or personal  
11 representative.

12 NEW SECTION. Section 46. Cy pres doctrine. If  
13 property is given in trust to be applied to a particular  
14 charitable purpose, and it is or becomes impossible,  
15 impracticable, or illegal to carry out the particular  
16 purpose, and if the trustor manifested a general intention  
17 to devote the property to charitable purposes, the trust  
18 need not fail. The court may direct the application of the  
19 property to some charitable purpose which falls within the  
20 general charitable intention of the trustor.

21 NEW SECTION. Section 47. Acceptance of trust by  
22 trustee. (1) The person named as trustee may accept the  
23 trust, or a modification of the trust, by one of the  
24 following methods:  
25 (a) signing the trust instrument or the trust

1 instrument as modified, or signing a separate written  
2 acceptance; or

3 (b) knowingly exercising powers or performing duties  
4 under the trust instrument or the trust instrument as  
5 modified, except as provided in subsection (2).

6 (2) In a case where there is an immediate risk of  
7 damage to the trust property, the person named as trustee  
8 may act to preserve the trust property without accepting the  
9 trust or a modification of the trust, if within reasonable  
10 time after acting the person delivers a written rejection of  
11 the trust or the modification of the trust to the trustor  
12 or, if the trustor is dead or incompetent, to a beneficiary.  
13 This subsection does not impose a duty on the person named  
14 as trustee to act.

15 NEW SECTION. Section 48. Rejection of trust --  
16 nonliability of person who rejects trust. (1) A person named  
17 as trustee may in writing reject the trust or a modification  
18 of the trust.

19 (2) If the person named as trustee does not accept the  
20 trust or a modification of the trust by a method provided in  
21 [section 47(1)] within a reasonable time after learning of  
22 being named as trustee or of the modification, the person  
23 has rejected the trust or the modification.

24 (3) A person named as trustee who rejects the trust or  
25 a modification of the trust is not liable with respect to

1 the rejected trust or modification.

2 NEW SECTION. Section 49. Trustee's bond. (1) A  
3 trustee is not required to give a bond to secure performance  
4 of the trustee's duties, unless either of the following  
5 circumstances occur OCCURS:

6 (a) A bond is required by the trust instrument.

7 (b) Notwithstanding a waiver of bond in the trust  
8 instrument, a bond is found by the court to be necessary to  
9 protect the interests of beneficiaries.

10 (2) Notwithstanding subsection (1)(a), the court may  
11 excuse a requirement of a bond, reduce or increase the  
12 amount of a bond, release a surety, permit the substitution  
13 of another bond with the same or different sureties, or  
14 accept another form of security.

15 (3) If a bond is required, it shall be filed or  
16 served, in the amount, and with sureties and liabilities as  
17 provided in the trust instrument or as ordered by the court.

18 (4) Except as otherwise provided in the trust  
19 instrument or ordered by the court, the cost of the bond  
20 shall be charged against the trust.

21 (5) A trust company may not be required to give a  
22 bond, notwithstanding a contrary provision in the trust  
23 instrument.

24 NEW SECTION. Section 50. Certificate of trustee. On  
25 application by the trustee, the clerk of the district court

1 shall issue a certificate that the trustee is a duly  
2 appointed and acting trustee under the trust if the court  
3 file shows the incumbency of the trustee.

4 NEW SECTION. Section 51. Cotrustees. (1) Unless  
5 otherwise provided in the trust instrument, a power vested  
6 in two trustees may only be exercised by their unanimous  
7 action.

8 (2) Unless otherwise provided in the trust instrument,  
9 a power vested in three or more trustees may be exercised by  
10 a majority of such trustees.

11 NEW SECTION. Section 52. Vacancy in office of  
12 cotrustee. Unless otherwise provided in the trust  
13 instrument, if a vacancy occurs in the office of a  
14 cotrustee, the remaining cotrustee or cotrustees may act for  
15 the trust as if they are the only trustees.

16 NEW SECTION. Section 53. Temporary incapacity of  
17 cotrustee. Unless otherwise provided in the trust  
18 instrument, if a cotrustee is unavailable to perform the  
19 duties of the cotrustee because of absence, illness, or  
20 other temporary incapacity, the remaining cotrustee or  
21 cotrustees may act for the trust when necessary to  
22 accomplish the purposes of the trust or to avoid irreparable  
23 injury to the trust property as if they are the only  
24 trustees.

25 NEW SECTION. Section 54. Resignation of the trustee.

1 (1) A trustee who has accepted the trust may resign only by  
2 one of the following methods:

3 (a) as provided in the trust instrument;

4 (b) in the case of a revocable trust, with the consent  
5 of the person holding the power to revoke the trust;

6 (c) in the case of a trust that is not revocable, with  
7 the consent of only all of the adult beneficiaries who are  
8 receiving or are entitled to receive income under the trust  
9 or to receive a distribution of principal if the trust were  
10 terminated at the time consent is sought; or

11 (d) pursuant to a court order obtained as provided in  
12 subsection (2).

13 (2) On petition by the trustee, the court shall accept  
14 the trustee's resignation. The court may also make any  
15 orders necessary for the preservation of the trust property,  
16 including the appointment of a receiver or a temporary  
17 trustee.

18 NEW SECTION. Section 55. Liability upon resignation.  
19 The liability for acts or omissions of a resigning trustee  
20 or of the sureties on the trustee's bond, if any, is not  
21 released or affected in any manner by the trustee's  
22 resignation.

23 NEW SECTION. Section 56. Removal of a trustee. (1) A  
24 trustee may be removed in accordance with the trust  
25 instrument or by the court on its own motion or on petition

1 of a cotrustee or beneficiary.

2 (2) The grounds for removal of a trustee by the court  
3 include the following:

4 (a) if the trustee has committed a breach of the  
5 trust;

6 (b) if the trustee is insolvent or otherwise unfit to  
7 administer the trust;

8 (c) if hostility or lack of cooperation among  
9 cotrustees impairs the administration of the trust;

10 (d) if the trustee fails or declines to act; or

11 (e) for other good cause.

12 (3) If it appears to the court that trust property or  
13 the interests of a beneficiary may suffer loss or injury  
14 pending a decision on a petition for removal of a trustee  
15 and any appellate review, the court may, on its own motion  
16 or on petition of a cotrustee or beneficiary, compel the  
17 trustee whose removal is sought to surrender trust property  
18 to a cotrustee or to a receiver or temporary trustee. The  
19 court may also suspend the powers of the trustee to the  
20 extent the court considers necessary.

21 NEW SECTION. Section 57. Vacancy in office of  
22 trustee. There is a vacancy in the office of trustee in any  
23 of the following circumstances:

24 (1) The person named as trustee rejects the trust.

25 (2) The person named as trustee cannot be identified

1 or does not exist.

2 (3) The trustee resigns or is removed.

3 (4) The trustee dies.

4 (5) A conservator or guardian of an individual trustee  
5 is appointed.

6 (6) A certificate of incorporation of a trust company  
7 is revoked or its powers are suspended, if the revocation or  
8 suspension is to be in effect for a period of 30 days or  
9 more.

10 (7) A receiver is appointed for a trust company if the  
11 appointment is not vacated within a period of 30 days.

12 NEW SECTION. Section 58. Delivery of property by  
13 former trustee upon occurrence of vacancy. When a vacancy  
14 has occurred in the office of trustee, the former trustee  
15 who holds property of the trust shall deliver the trust  
16 property to the successor trustee or a person appointed by  
17 the court to receive the property and remains responsible  
18 for the trust property until it is delivered. A trustee who  
19 has resigned or is removed has the powers reasonably  
20 necessary under the circumstances to preserve the trust  
21 property until it is delivered to the successor trustee and  
22 to perform actions necessary to complete the resigning or  
23 removed trustee's administration of the trust.

24 NEW SECTION. Section 59. Appointment of trustee to  
25 fill vacancy. (1) If the trust has no trustee or if the

1 trust instrument requires a vacancy in the office of a  
2 cotrustee to be filled, the vacancy shall be filled as  
3 provided in this section.

4 (2) If the trust instrument provides a practical  
5 method of appointing a trustee or names the person to fill  
6 the vacancy, the vacancy shall be filled as provided in the  
7 trust instrument.

8 (3) If the vacancy in the office of trustee is not  
9 filled as provided in subsection (2), on petition of a  
10 cotrustee or beneficiary the court may, in its discretion,  
11 appoint a trustee to fill the vacancy. If the trust provides  
12 for more than one trustee, the court may, in its discretion,  
13 appoint the original number or any lesser number of  
14 trustees. In selecting a trustee, the court shall give  
15 consideration to the wishes of the beneficiaries who are 14  
16 years of age or older.

17 NEW SECTION. Section 60. Capacity of trustee. (1) The  
18 trustee must have the legal capacity to take, hold, and  
19 transfer the trust property. The trustee may be a natural  
20 person or a corporation or trust company. If the trustee is  
21 a corporation, it must be qualified to act as a trustee in  
22 this state.

23 (2) A beneficiary of a trust may be the trustee of the  
24 trust.

25 (3) The trustor of a trust may be the trustee of the

1 trust.

2 NEW SECTION. Section 61. Trustee's compensation as  
3 provided in trust instrument -- different compensation. (1)  
4 Subject to subsection (2), if the trust instrument provides  
5 for the trustee's compensation, the trustee is entitled to  
6 be compensated in accordance with the trust instrument.

7 (2) Upon proper showing, the court may fix or allow  
8 greater or lesser compensation than could be allowed under  
9 the terms of the trust in any of the following  
10 circumstances:

11 (a) whenever the duties of the trustee are  
12 substantially different from those contemplated when the  
13 trust was created;

14 (b) whenever the compensation in accordance with the  
15 terms of the trust would be inequitable or unreasonably low  
16 or high; or

17 (c) in extraordinary circumstances calling for  
18 equitable relief.

19 (3) An order fixing or allowing greater or lesser  
20 compensation under subsection (2) applies only prospectively  
21 to actions taken in administration of the trust after the  
22 order is made.

23 NEW SECTION. Section 62. Trustee's compensation where  
24 trust silent. If the trust instrument does not specify the  
25 trustee's compensation, the trustee is entitled to



1 reasonable compensation.

2 NEW SECTION. Section 63. Compensation for services  
3 rendered in making temporary investments. In addition to  
4 other compensation to which the trustee is entitled, the  
5 trustee is entitled to make a reasonable charge for services  
6 rendered in making temporary investments.

7 NEW SECTION. Section 64. Court determination of  
8 prospective compensation. The court may fix an amount of  
9 periodic compensation under [sections 61 and 62] to continue  
10 for as long as the court determines is proper.

11 NEW SECTION. Section 65. Compensation of cotrustees.  
12 Unless the trust instrument otherwise provides or the  
13 trustees otherwise agree, if the trust has two or more  
14 trustees, the compensation shall be apportioned among the  
15 cotrustees according to the services rendered by them.

16 NEW SECTION. Section 66. Repayment of trustee for  
17 expenditures. A trustee is entitled to the repayment out of  
18 the trust property for the following:

19 (1) expenditures that were properly incurred in the  
20 administration of the trust; and

21 (2) to the extent that they benefited the trust,  
22 expenditures that were not properly incurred in the  
23 administration of the trust.

24 NEW SECTION. Section 67. Trustee's lien. The trustee  
25 has an equitable lien on the trust property as against the

1 beneficiary in the amount of advances, with any interest,  
2 made for the protection of the trust, and for expenses,  
3 losses, and liabilities sustained in the administration of  
4 the trust or because of ownership or control of any trust  
5 property.

6 NEW SECTION. Section 68. Limits on rights of  
7 beneficiary of revocable trust. Except to the extent that  
8 the trust instrument otherwise provides or where the joint  
9 action of the trustor and all beneficiaries is required,  
10 during the time that a trust is revocable and the person  
11 holding the power to revoke the trust is competent:

12 (1) The person holding the power to revoke, and not  
13 the beneficiary, has the rights afforded beneficiaries under  
14 [sections 1 through 215].

15 (2) The duties of the trustee are owed to the person  
16 holding the power to revoke.

17 NEW SECTION. Section 69. Consent by beneficiary of  
18 revocable trust. (1) In any case where the consent of a  
19 beneficiary may be given or is required to be given before  
20 an action may be taken, during the time that a trust is  
21 revocable and the person holding the power to revoke the  
22 trust is competent, the person holding the power to revoke,  
23 and not the beneficiary, has the power to consent or  
24 withhold consent.

25 (2) This section does not apply where the joint

1 consent of the trustor and all beneficiaries is required by  
2 statute.

3 NEW SECTION. Section 70. Notice to beneficiary of  
4 revocable trust. Notwithstanding any other statute, during  
5 the time that a trust is revocable and the person holding  
6 the power to revoke the trust is competent, a notice that is  
7 to be given to a beneficiary shall be given to the person  
8 holding the power to revoke and not to the beneficiary.

9 NEW SECTION. Section 71. Rights of holder of power of  
10 appointment or withdrawal. The holder of a presently  
11 exercisable general power of appointment or power to  
12 withdraw property from the trust has the rights of a trustor  
13 provided by [sections 68 through 70], inclusive, to the  
14 extent of the holder's power over the trust property.

15 NEW SECTION. Section 72. Notice in case involving  
16 future interest of beneficiary. (1) Subject to subsections  
17 (2) and (3), it is sufficient compliance with a requirement  
18 in [sections 1 through 215] that notice be given to a  
19 beneficiary, or to a person interested in the trust, if  
20 notice is given as follows:

21 (a) Whenever an interest has been limited on any  
22 future contingency to persons who will compose a certain  
23 class upon the happening of a certain event without further  
24 limitation, notice shall be given to the persons in being  
25 who would constitute the class if the event had happened

1 immediately before the commencement of the proceedings.

2 (b) Whenever an interest has been limited to a living  
3 person and the same interest, or a share therein, has been  
4 further limited upon the happening of a future event to the  
5 surviving spouse or to persons who are or may be the  
6 distributees, heirs, issue, or other kindred of the living  
7 persons, notice shall be given to the living person.

8 (c) Whenever an interest has been limited upon the  
9 happening of any future event to a person, or a class of  
10 persons, or both, and the interest, or a share of the  
11 interest, has been further limited upon the happening of an  
12 additional future event to another person, or a class of  
13 persons, or both, notice shall be given to the person or  
14 persons in being who would take the interest upon the  
15 happening of the first of these events.

16 (2) If a conflict of interest involving the subject  
17 matter of the trust proceeding exists between a person to  
18 whom notice is required to be given and a person to whom  
19 notice is not otherwise required to be given under  
20 subsection (1), notice shall also be given to persons not  
21 otherwise entitled to notice under subsection (1) with  
22 respect to whom the conflict of interest exists.

23 (3) Nothing in this section affects any of the  
24 following:

25 (a) requirements for notice to:

(i) a person who has requested special notice;

(ii) a person who has filed notice of appearance; or

(iii) a particular person or entity required by statute to be given notice.

(b) Availability of a guardian ad litem pursuant to [section 187].

**NEW SECTION. Section 73. Duty to administer trust.** On acceptance of the trust, the trustee has a duty to administer the trust according to the trust instrument and, except to the extent the trust instrument provides otherwise, according to [sections 1 through 215].

**NEW SECTION. Section 74. Duties of trustee of revocable trust.** (1) Except as provided in subsection (2), the trustee of a revocable trust shall follow any written direction acceptable to the trustee given from time to time:

(a) by the person then having the power to revoke the trust or the part thereof with respect to which the direction is given; or

(b) by the person to whom the trustor delegates the right to direct the trustee.

(2) If a written direction given under subsection (1) would have the effect of modifying the trust, the trustee has no duty to follow the direction unless it complies with the requirements for modifying the trust.

**NEW SECTION. Section 75. Duty of loyalty.** (1) The

trustee has a duty to administer the trust solely in the interest of the beneficiaries.

(2) It is not a violation of the duty provided in subsection (1) for a trustee who administers two trusts to sell, exchange, or participate in the sale or exchange of trust property between the trusts, if both of the following requirements are met:

(a) the sale or exchange is fair and reasonable with respect to the beneficiaries of both trusts; and

(b) the trustee gives to the beneficiaries of both trusts notice of all material facts related to the sale or exchange that the trustee knows or should know.

**NEW SECTION. Section 76. Duty to deal impartially with beneficiaries.** If a trust has two or more beneficiaries, the trustee has a duty to deal impartially with them.

**NEW SECTION. Section 77. Duty to avoid conflict of interest.** (1) The trustee has a duty not to use or deal with trust property for the trustee's own profit or for any other purpose unconnected with the trust, nor to take part in any transaction in which the trustee has an interest adverse to the beneficiary.

(2) The trustee may not enforce any claim against the trust property that the trustee purchased after or in contemplation of appointment as trustee, but the court may

1 allow the trustee to be reimbursed from trust property the  
2 amount that the trustee paid for the claim.

3 (3) A transaction between the trustee and a  
4 beneficiary which occurs during the existence of the trust  
5 or while the trustee's influence with the beneficiary  
6 remains and by which the trustee obtains an advantage from  
7 the beneficiary is presumed to be a violation of the  
8 trustee's fiduciary duties. This presumption is a  
9 presumption affecting the burden of proof. This subsection  
10 does not apply to the provisions of an agreement between a  
11 trustee and a beneficiary relating to the hiring or  
12 compensation of the trustee.

13 NEW SECTION. Section 78. Duty not to undertake  
14 adverse trust. The trustee of one trust has a duty not to  
15 knowingly become a trustee of another trust adverse in its  
16 nature to the interest of the beneficiary of the first  
17 trust, and a duty to eliminate the conflict or resign as  
18 trustee when the conflict is discovered.

19 NEW SECTION. Section 79. Duty to take control of and  
20 preserve trust property. The trustee has a duty to take  
21 reasonable steps under the circumstances to take and keep  
22 control of and to preserve the trust property.

23 NEW SECTION. Section 80. Duty to make trust property  
24 productive. The trustee has a duty to make the trust  
25 property productive under the circumstances and in

1 furtherance of the purposes of the trust.

2 NEW SECTION. Section 81. Duty to dispose of improper  
3 investments. (1) Except as provided in subsection (2), the  
4 trustee has a duty within a reasonable time to dispose of  
5 any part of the trust property included in the trust at the  
6 time of its creation, or later acquired by or added to the  
7 trust, that would not be a proper investment for the trustee  
8 to make.

9 (2) Unless the trust instrument expressly provides  
10 otherwise, the trustee may, without liability, continue to  
11 hold property included in the trust at its creation or later  
12 added to the trust or acquired pursuant to proper authority,  
13 if retention is in the best interests of the trust or in  
14 furtherance of the purposes of the trust.

15 NEW SECTION. Section 82. Duty to keep trust property  
16 separate and identified. The trustee has a duty to do the  
17 following:

18 (1) to keep the trust property separate from other  
19 property not subject to the trust; and

20 (2) to see that the trust property is designated as  
21 property of the trust.

22 NEW SECTION. Section 83. Duty to enforce claims. The  
23 trustee has a duty to take reasonable steps to enforce  
24 claims that are part of the trust property.

25 NEW SECTION. Section 84. Duty to defend actions. The

1 trustee has a duty to take reasonable steps to defend  
2 actions that may result in a loss to the trust.

3 NEW SECTION. Section 85. Duty not to delegate. (1)  
4 The trustee has a duty not to delegate to others the  
5 performance of acts that the trustee can reasonably be  
6 required personally to perform and may not transfer the  
7 office of trustee to another person nor delegate the entire  
8 administration of the trust to a cotrustee or other person.

9 (2) In a case where a trustee has properly delegated a  
10 matter to an agent, cotrustee, or other person, the trustee  
11 has a duty to exercise general supervision over the person  
12 performing the delegated matter.

13 NEW SECTION. Section 86. Duty with respect to  
14 cotrustees. If a trust has more than one trustee, each  
15 trustee has a duty to do the following:

16 (1) to participate in the administration of the trust;  
17 and

18 (2) to take reasonable steps to prevent a cotrustee  
19 from committing a breach of trust or to compel a cotrustee  
20 to redress a breach of trust.

21 NEW SECTION. Section 87. Duty to use special skills.  
22 (1) The trustee has a duty to apply the full extent of the  
23 trustee's skills.

24 (2) If the trustor, in selecting the trustee, has  
25 relied on the trustee's representation of having special

1 skills, the trustee is held to the standard of the skills  
2 represented.

3 NEW SECTION. Section 88. Certain actions not  
4 violations of duties. The provision of services for  
5 compensation by a regulated financial institution or its  
6 affiliates in the ordinary course of business either to a  
7 trust of which it also acts as trustee or to a person  
8 dealing with the trust is not a violation of the duty  
9 provided in [section 75 or 77]. For the purposes of this  
10 section, "affiliate" means a corporation that directly or  
11 indirectly through one or more intermediaries controls, is  
12 controlled by, or is under common control with another  
13 domestic or foreign corporation.

14 NEW SECTION. Section 89. Duty to use ordinary skill  
15 and prudence. (1) The trustee shall administer the trust  
16 with the care, skill, prudence, and diligence under the  
17 circumstances then prevailing that a prudent person would  
18 use to accomplish the purposes of the trust as determined  
19 from the trust instrument.

20 (2) When investing, reinvesting, purchasing,  
21 acquiring, exchanging, selling, and managing trust property,  
22 the trustee shall act with the care, skill, prudence, and  
23 diligence under the circumstances then prevailing, including  
24 but not limited to the general economic conditions and the  
25 anticipated needs of the trust and its beneficiaries, that a

prudent person would use to accomplish the purposes of the trust as determined from the trust instrument. In the course of administering the trust pursuant to this standard, individual investments shall be considered as part of an overall investment strategy.

(3) The trustor may expand or restrict the standards provided in subsections (1) and (2) by express provisions in the trust instrument. A trustee is not liable to a beneficiary for the trustee's reliance on these express provisions.

**NEW SECTION. Section 90.** Standard of care not affected by compensation. A trustee's standard of care and performance in administering the trust is not affected by whether or not the trustee receives any compensation.

**NEW SECTION. Section 91.** Interpretation of trust terms concerning legal investments. If a trust created before, on, or after October 1, 1989, refers to "investments permissible by law for investment of trust funds", "authorized by law for investment of trust funds", "legal investments", "authorized investments", or "investments acquired using the judgment and care which men of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation, but in regard to the permanent disposition of their funds, considering the probable income, as well as the probable

safety of their capital", or uses other words of similar meaning in defining the powers of the trustee relative to investments, such language, in the absence of other controlling or modifying provisions of the trust instrument, shall be construed as imposing the standard of care provided by [section 89] and authorizing any investment permitted under [sections 105 through 137].

**NEW SECTION. Section 92.** Trustee's general duty to report information to beneficiaries. The trustee has a duty to keep the beneficiaries of the trust reasonably informed of the trust and its administration.

**NEW SECTION. Section 93.** Duty to report information about trust on request. Except as provided in [section 95], on reasonable request by a beneficiary, the trustee shall provide the beneficiary with a report of information about the assets, liabilities, receipts, and disbursements of the trust, the acts of the trustee, and the particulars relating to the administration of the trust relevant to the beneficiary's interest, including the terms of the trust that describe or affect the beneficiary's interest.

**NEW SECTION. Section 94.** Duty to provide annual statement to income beneficiaries. Except as provided in [section 95], the trustee shall annually mail each income beneficiary an itemized statement of all current receipts and disbursements of both principal and income.

1 **NEW SECTION. Section 95. Exceptions to duty to report**  
 2 **information and to provide annual statement.** The trustee is  
 3 not required to report information or to provide an annual  
 4 statement to a beneficiary in any of the following  
 5 circumstances:

6 (1) to the extent the trust instrument waives the  
 7 report or annual statement;

8 (2) in the case of a beneficiary of a revocable trust,  
 9 as provided in [section 68].

10 (3) as to a beneficiary who has waived in writing the  
 11 right to a report or annual statement. A waiver of rights  
 12 under this subsection may be withdrawn in writing at any  
 13 time as to the most recent annual statement or future annual  
 14 statements. A waiver has no effect of the beneficiary's  
 15 right to petition for a report, statement, or account  
 16 pursuant to [section 179]; or

17 (4) if the beneficiary and the trustee are the same  
 18 person.

19 **NEW SECTION. Section 96. Permissive accounts.** At any  
 20 time during the term of the trust or upon the termination of  
 21 the trust, the trustee may mail an account to trust  
 22 beneficiaries. To effectively bar a beneficiary from an  
 23 action against the trustee pursuant to [section 159], the  
 24 account must contain the following information:

25 (1) a statement of receipts and disbursements of

1 principal and income that have occurred since the last  
 2 account;

3 (2) a statement of the assets and liabilities of the  
 4 trust since the last account;

5 (3) the trustee's compensation since the last account;

6 (4) the agents hired by the trustee, their  
 7 relationship to the trustee, if any, and their compensation  
 8 since the last account;

9 (5) a statement that the recipient of the account may  
 10 petition the court pursuant to [section 179] to obtain a  
 11 court review of the account and of the acts of the trustee;  
 12 and

13 (6) a statement that claims against the trustee for  
 14 breach of trust may not be made after the expiration of 3  
 15 years from the date the beneficiary receives an account  
 16 disclosing facts giving rise to the claim.

17 **NEW SECTION. Section 97. Discretionary powers to be**  
 18 **exercised reasonably.** Except as provided in [section 98], a  
 19 discretionary power conferred upon a trustee is not left to  
 20 the trustee's arbitrary discretion, but shall be exercised  
 21 reasonably.

22 **NEW SECTION. Section 98. Standard for exercise of**  
 23 **"absolute", "sole", or "uncontrolled" powers.** (1) Subject to  
 24 the additional requirements of subsection (2), if a trust  
 25 instrument confers "absolute", "sole", or "uncontrolled"

discretion on a trustee, the trustee shall act in accordance with fiduciary principles and may not act in disregard of the purposes of the trust.

(2) Notwithstanding the trustor's use of terms like "absolute", "sole", or "uncontrolled", a person who is a beneficiary of a trust and who, either individually or as trustee or cotrustee, holds a power to take or distribute income or principal to or for the benefit of himself or herself pursuant to a standard, shall exercise that power reasonably and in accordance with the standard. In any case in which the standard governing the exercise of the power does not clearly indicate that a broader power is intended, the holder of the power may exercise it in his or her favor only for his or her health, education, support, or maintenance.

**NEW SECTION. Section 99. Definitions.** As used in [sections 99 through 104], the following definitions apply:

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

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

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

**NEW SECTION. Section 100. Distribution** under charitable trust or private foundation. During any period when a trust is considered to be a charitable trust or a private foundation, the trustee shall distribute its income for each taxable year (and principal if necessary) at a time and in a manner that will not subject the property of the trust to tax under section 4942 of the Internal Revenue Code.

**NEW SECTION. Section 101. Restrictions on trustees** under charitable trust, private foundations, or split-interest trust. During any period when a trust is considered to be a charitable trust, a private foundation, or a split-interest trust, the trustee may not do any of the following:

(1) engage in any act of self-dealing as defined in section 4941(d) of the Internal Revenue Code;

(2) retain any excess business holdings as defined in section 4943(c) of the Internal Revenue Code;

(3) make any investments in such manner as to subject the property of the trust to tax under section 4944 of the Internal Revenue Code; or

(4) make any taxable expenditure as defined in section 4945(d) of the Internal Revenue Code.

**NEW SECTION. Section 102. Exceptions** applicable to split-interest trusts. With respect to split-interest



1 trusts:

2 (1) [Subsections (2) and (3) of section 101] do not  
3 apply to any trust described in section 4947(b)(3) of the  
4 Internal Revenue Code.

5 (2) [Section 101] does not apply with respect to any  
6 of the following:

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

11 (b) any amounts in trust other than amounts for which  
12 a deduction was allowed under section 170, 545(b)(2),  
13 556(b)(2), 642(c), 2055, 2106(a)(2), or 2522 of the Internal  
14 Revenue Code, if the amounts are segregated, as that term is  
15 defined in section 4947(a)(3) of the Internal Revenue Code,  
16 from amounts for which no deduction was allowable; or

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

19 **NEW SECTION. Section 103.** Incorporation in trust  
20 instruments. The provisions of [sections 100 through 102]  
21 shall be considered to be contained in the instrument  
22 creating every trust to which [sections 99 through 104]  
23 apply. Any provision of the instrument inconsistent with or  
24 contrary to [sections 99 through 104] is without effect.

25 **NEW SECTION. Section 104.** Proceedings. (1) A

1 proceeding contemplated by section 101(1)(3) of the federal  
2 Tax Reform Act of 1969 (Public Law 91-172) may be commenced  
3 pursuant to [section 179] by the organization involved. All  
4 specifically named beneficiaries of the organization and the  
5 attorney general shall be parties to the proceedings.  
6 Notwithstanding [section 165], this provision is not  
7 exclusive and does not limit any jurisdiction that otherwise  
8 exists.

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

15 **NEW SECTION. Section 105.** General powers of trustee.  
16 A trustee has the following powers without the need to  
17 obtain court authorization:

18 (1) the powers conferred by the trust instrument;

19 (2) except as limited in the trust instrument, the  
20 powers conferred by statute; and

21 (3) except as limited in the trust instrument, the  
22 power to perform any act that a trustee would perform for  
23 the purposes of the trust under the standard of care  
24 provided in [section 89].

25 **NEW SECTION. Section 106.** Power of court to relieve

1 trustee from restrictions on powers. [Sections 109 through  
2 137] do not affect the power of a court to relieve a trustee  
3 from restrictions on the exercise of powers under the trust  
4 instrument.

5 NEW SECTION. Section 107. Exercise of powers subject  
6 to trustee's duties. The grant of a power to a trustee,  
7 whether by the trust instrument, by statute, or by the  
8 court, does not in itself require or permit the exercise of  
9 the power. The exercise of a power by a trustee is subject  
10 to the trustee's fiduciary duties.

11 NEW SECTION. Section 103. Application of rules  
12 governing trustees' powers. An instrument that incorporates  
13 the powers provided in former Title 72, chapter 21,  
14 ("Montana Trustees' Powers Act") shall be considered to  
15 refer to the powers provided [sections 109 through 137]. For  
16 this purpose, the trustee's powers under former Title 72,  
17 chapter 21, ("Montana Trustees' Powers Act") are not  
18 diminished and the trustee is not required to obtain court  
19 approval for exercise of a power for which court approval  
20 was not required by former law.

21 NEW SECTION. Section 109. Collecting and holding  
22 property. The trustee has the power to collect, hold, and  
23 retain trust property received from a trustor or any other  
24 person until, in the judgment of the trustee, disposition of  
25 the property should be made. The property may be retained

1 even though it includes property in which the trustee is  
2 personally interested.

3 NEW SECTION. Section 110. Receiving additions to  
4 trust. The trustee has the power to accept additions to the  
5 property of the trust from a trustor or any other person.

6 NEW SECTION. Section 111. Participation in business  
7 -- change in form of business. The trustee has the power to  
8 continue to participate in the operation of any business or  
9 other enterprise that is part of the trust property and may  
10 effect incorporation, dissolution, or other change in the  
11 form of the organization of the business or enterprise.

12 NEW SECTION. Section 112. Investments. The trustee  
13 has the power to invest in any kind of property, whether  
14 real, personal, or mixed.

15 NEW SECTION. Section 113. Investments in obligations  
16 of United States government. ~~In the absence of an express~~  
17 ~~provision to the contrary in a trust instrument, whenever~~  
18 ~~the instrument directs or permits investment in obligations~~  
19 ~~of the United States government, the trustee has the power~~  
20 ~~to invest in those obligations directly or in the form of an~~  
21 ~~interest in a money market mutual fund registered under the~~  
22 ~~Investment Company Act of 1940 (15 U.S.C. section 80a-1 et~~  
23 ~~seq.) or an investment vehicle authorized for the collective~~  
24 ~~investment of trust funds pursuant to section 9.18 of Title~~  
25 ~~12 of the Code of Federal Regulations, the portfolios of~~

~~which-are-limited-to-United--States--government--obligations  
and--to-repurchase-agreements-fully-collateralized-by-United  
States-government-obligations IF THE PERSONAL REPRESENTATIVE  
IS AUTHORIZED TO INVEST FUNDS IN UNITED STATES OBLIGATIONS,  
HE MAY INVEST IN THESE OBLIGATIONS EITHER DIRECTLY OR IN THE  
FORM OF SECURITIES OF OR OTHER INTERESTS IN AN OPEN-END OR  
CLOSED-END MANAGEMENT TYPE INVESTMENT COMPANY OR INVESTMENT  
TRUST REGISTERED UNDER THE INVESTMENT COMPANY ACT OF 1940  
(15 U.S.C. 80A-1 THROUGH 80A-64), AS AMENDED, IF:~~

~~(1) THE PORTFOLIO OF THE INVESTMENT COMPANY OR  
INVESTMENT TRUST IS LIMITED TO UNITED STATES GOVERNMENT  
OBLIGATIONS AND REPURCHASE AGREEMENTS FULLY COLLATERALIZED  
BY UNITED STATES GOVERNMENT OBLIGATIONS; AND~~

~~(2) THE INVESTMENT COMPANY OR INVESTMENT TRUST TAKES  
DELIVERY OF THE COLLATERAL FOR ANY REPURCHASE AGREEMENT,  
EITHER DIRECTLY OR THROUGH AN AUTHORIZED CUSTODIAN.~~

NEW SECTION. Section 114. Deposits. (1) The trustee  
has the power to deposit trust funds at reasonable interest  
with any of the following:

- (a) an insured commercial or savings bank;
- (b) an insured building and loan association; or
- (c) an insured credit union.

(2) A trustee may deposit trust funds as described in  
subsection (1) in a financial institution operated by, or  
that is an affiliate of, the trustee. For the purpose of

this subsection, "affiliate" means a corporation that  
directly or indirectly through one or more intermediaries  
controls, is controlled by, or is under common control with  
another domestic or foreign corporation.

(3) This section does not limit the power of a trustee  
in a proper case to deposit trust funds in institutions as  
described in subsection (1) that are subject to notice or  
other conditions respecting withdrawal prescribed by law or  
governmental regulation.

(4) Nothing in this section prevents the trustee from  
holding an amount of trust property reasonably necessary for  
the orderly administration of the trust in the form of cash  
or in a checking account without interest.

NEW SECTION. Section 115. Acquisition and disposition  
of property. The trustee has the power to acquire or dispose  
of property, for cash or on credit, at public or private  
sale, or by exchange.

NEW SECTION. Section 116. Management of property. The  
trustee has the power to manage, control, divide, develop,  
improve, exchange, partition, change the character of, or  
abandon trust property or any interest therein.

NEW SECTION. Section 117. Encumbrances. The trustee  
has the power to encumber, mortgage, or pledge trust  
property for a term within or extending beyond the term of  
the trust in connection with the exercise of any power

1 vested in the trustee.

2 NEW SECTION. Section 118. Repairs and alterations of  
3 property. The trustee has the power to do any of the  
4 following:

5 (1) make ordinary or extraordinary repairs,  
6 alterations, improvements in buildings or other trust  
7 property;

8 (2) demolish any improvements; or

9 (3, raze existing or erect new party walls or  
10 buildings.

11 NEW SECTION. Section 119. Development of land. The  
12 trustee has the power to do any of the following:

13 (1) subdivide or develop land;

14 (2) dedicate land to public use;

15 (3) make or obtain the vacation of plats and adjust  
16 boundaries;

17 (4) adjust differences in valuation on exchange or  
18 partition by giving or receiving consideration; or

19 (5) dedicate easements to public use without  
20 consideration.

21 NEW SECTION. Section 120. Leases. The trustee has the  
22 power to enter into a lease for any purpose as lessor or  
23 lessee with or without the option to purchase or renew and  
24 for a term within or extending beyond the term of the trust.

25 NEW SECTION. Section 121. Mineral leases. The trustee

1 has the power to enter into a lease or arrangement for  
2 exploration and removal of gas, oil, or other minerals, and  
3 to enter into a community oil lease or a pooling or  
4 utilization agreement, and for a term within or extending  
5 beyond the term of the trust.

6 NEW SECTION. Section 122. Options. The trustee has  
7 the power to grant an option involving disposition of trust  
8 property or to take an option for the acquisition of any  
9 property, and an option may be granted or taken that is  
10 exercisable beyond the term of the trust.

11 NEW SECTION. Section 123. Voting rights with respect  
12 to corporate shares, memberships, or property. With respect  
13 to any shares of stock of a domestic or foreign corporation,  
14 any membership in a nonprofit corporation, or any other  
15 property, a trustee has the power to do any of the  
16 following:

17 (1) vote in person and give proxies to exercise any  
18 voting rights with respect to the shares, memberships, or  
19 property;

20 (2) waive notice of a meeting or give consent to the  
21 holding of a meeting; or

22 (3) authorize, ratify, approve, or confirm any action  
23 that could be taken by shareholders, members, or property  
24 owners.

25 NEW SECTION. Section 124. Payment of calls and

assessments. The trustee has the power to pay calls, assessments, and any other sums chargeable or accruing against or on account of securities.

NEW SECTION. Section 125. Stock subscriptions and conversions. The trustee has the power to sell or exercise stock subscription or conversion rights.

NEW SECTION. Section 126. Consent to change in form of business -- voting trusts. The trustee has the power to consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise, and to participate in voting trusts, pooling arrangements, and foreclosures, and in connection therewith, to deposit securities with and transfer title and delegate discretions to any protective or other committee as the trustee may consider advisable.

NEW SECTION. Section 127. Holding securities in name of nominee. The trustee has the power to hold a security in the name of a nominee or in other form without disclosure of the trust so that title to the security may pass by delivery, but the trustee is liable for any act of the nominee in connection with the security so held.

NEW SECTION. Section 128. Insurance. The trustee has the power to insure the property of the trust against damage or loss and to insure the trustee against liability with

respect to third persons.

NEW SECTION. Section 129. Borrowing money. The trustee has the power to borrow money for any trust purpose to be repaid from trust property.

NEW SECTION. Section 130. Payment and settlement of claims. The trustee has the power to do any of the following:

- (1) pay or contest any claim;
- (2) settle a claim by or against the trust by compromise, arbitration, or otherwise; or
- (3) release, in whole or in part, any claim belonging to the trust.

NEW SECTION. Section 131. Payment of taxes, trustee's compensation, and other expenses. The trustee has the power to pay taxes, assessments, reasonable compensation of the trustee and of employees and agents of the trust, and other expenses incurred in the collection, care, administration, and protection of the trust.

NEW SECTION. Section 132. Loans to beneficiary. The trustee has the following powers:

- (1) to make loans out of trust property to the beneficiary on terms and conditions that the trustee determines are fair and reasonable under the circumstances; and
- (2) to guarantee loans to the beneficiary by

1 encumbrances on trust property.

2 NEW SECTION. Section 133. Distribution to  
3 beneficiaries under legal disability. The trustee has the  
4 power to pay any sum distributable to a beneficiary, without  
5 regard to whether the beneficiary is under a legal  
6 disability, by paying the sum to the beneficiary or by  
7 paying the sum to another person for the use or benefit of  
8 the beneficiary.

9 NEW SECTION. Section 134. Nature and value of  
10 distributions. The trustee has the power to effect  
11 distribution of property and money in divided or undivided  
12 interests and to adjust resulting differences in valuation.  
13 A distribution in kind may be made pro rata or non-pro rata.

14 NEW SECTION. Section 135. Hiring persons. The trustee  
15 has the power to hire persons, including accountants,  
16 attorneys, auditors, investment advisors, or other agents,  
17 even if they are associated or affiliated with the trustee,  
18 to advise or assist the trustee in the performance of  
19 administrative duties.

20 NEW SECTION. Section 136. Execution and delivery of  
21 instruments. The trustee has the power to execute and  
22 deliver all instruments which are needed to accomplish or  
23 facilitate the exercise of the powers vested in the trustee.

24 NEW SECTION. Section 137. Actions and proceedings.  
25 The trustee has the power to prosecute or defend actions,

1 claims, or proceedings for the protection of trust property  
2 and of the trustee in the performance of the trustee's  
3 duties.

4 NEW SECTION. Section 138. Short title. [Sections 138  
5 through 150] may be cited as the "Revised Uniform Principal  
6 and Income Act".

7 NEW SECTION. Section 139. Definitions. As used in  
8 [sections 138 through 150], the following definitions apply:

9 (1) "Income beneficiary" means the person to whom  
10 income is presently payable or for whom it is accumulated  
11 for distribution as income.

12 (2) "Inventory value" means the adjusted basis for  
13 federal income tax purposes.

14 (3) "Remainder beneficiary" means the person entitled  
15 to principal, including income which has been accumulated  
16 and added to principal.

17 (4) "Trustee" means the original trustee, any  
18 succeeding or added trustee, and the personal representative  
19 of a decedent's estate whenever a provision of this part is  
20 applicable to the estate.

21 NEW SECTION. Section 140. Duty of trustee as to  
22 receipts and expenditures. (1) A trust shall be administered  
23 with due regard to the respective interests of income  
24 beneficiaries and remainder beneficiaries. A trust is so  
25 administered with respect to the allocation of receipts and

1 expenditures if a receipt is credited or an expenditure is  
2 charged to income or principal or partly to each in any of  
3 the following ways:

4 (a) in accordance with the terms of the trust  
5 instrument, notwithstanding contrary provisions of this  
6 part;

7 (b) in the absence of any contrary terms of the trust  
8 instrument, in accordance with the provisions of this part;  
9 or

10 (c) if neither subsection (a) nor (b) is applicable,  
11 in accordance with the standard of care provided in [section  
12 89] and with what is reasonable and equitable in view of the  
13 interests of those entitled to income as well as of those  
14 entitled to principal.

15 (2) If the trust gives the trustee discretion in  
16 crediting a receipt or charging an expenditure to income or  
17 principal or partly to each, no inference that the trustee  
18 has improperly exercised such discretion arises from the  
19 fact that the trustee has made an allocation contrary to a  
20 provision of this part.

21 **NEW SECTION. Section 141. Income -- principal --**  
22 **charges.** (1) Income is the return in money or property  
23 derived from the use of principal, including return received  
24 as:

25 (a) rent of real or personal property, including sums

1 received for cancellation or renewal of a lease;

2 (b) interest on money lent, including sums received as  
3 consideration for the prepayment of principal except as  
4 provided in [section 145] on bond premium and bond discount;

5 (c) income earned during administration of a  
6 decedent's estate as provided in [section ~~144~~ 143];

7 (d) corporate distributions as provided in [section  
8 ~~145~~ 144];

9 (e) accrued increment on bonds or other obligations  
10 issued at discount as provided in [section 145];

11 (f) receipts from business and farming operations as  
12 provided in [section 146];

13 (g) receipts from disposition of natural resources as  
14 provided in [sections 147 and 148]; or

15 (h) receipts from other principal subject to depletion  
16 as provided in [section 149].

17 (2) Principal is the property which has been set aside  
18 by the owner or the person legally empowered so that it is  
19 held in trust eventually to be delivered to a remainder  
20 beneficiary, while the return or use of the principal is in  
21 the meantime taken or received by or held for accumulation  
22 for an income beneficiary. Principal includes the following:

23 (a) consideration received by the trustee on the sale  
24 or other transfer of principal or a repayment of a loan or  
25 as a refund or replacement or change in the form of

1 principal;

2 (b) proceeds of property taken on eminent domain

3 proceedings;

4 (c) proceeds of insurance upon property forming part

5 of the principal except proceeds of insurance upon a

6 separate interest of an income beneficiary;

7 (d) stock dividends, receipts on liquidation of a

8 corporation, and other corporate distributions as provided

9 in [section 144];

10 (e) receipts from the disposition of corporate

11 securities as provided in [section 145];

12 (f) royalties and other receipts from disposition of

13 natural resources as provided in [sections 147 and 148];

14 (g) receipts from other principal subject to depletion

15 as provided in [section 149];

16 (h) any profit resulting from any change in the form

17 of principal; or

18 (i) any allowances for depreciation established under

19 [section 150(1)(b)].

20 (3) After determining income and principal in

21 accordance with the terms of the trust instrument or of this

22 part, the trustee shall charge to income or principal the

23 expenses and other charges as provided in [section 150].

24 **NEW SECTION. Section 142. When right to income arises**

25 -- apportionment of income. (1) An income beneficiary is

1 entitled to income from the date specified in the trust

2 instrument or, if none is specified, from the date an item

3 of property becomes subject to the trust. In the case of an

4 item of property becoming subject to a trust by reason of a

5 person's death, it becomes subject to the trust as of the

6 date of the death of the person even though there is an

7 intervening period of administration of the person's estate.

8 (2) Upon property becoming subject to a trust by

9 reason of a person's death:

10 (a) Receipts due but not paid at the date of death of

11 the person are principal.

12 (b) Receipts in the form of periodic payments (other

13 than corporate distributions to stockholders), including

14 rent, interest, or annuities, not due at the date of the

15 death of the person shall be treated as accruing from day to

16 day. That portion of the receipt accruing before the date of

17 death is principal and the balance is income.

18 (3) In all other cases, any receipt from

19 income-producing property is income even though the receipt

20 was earned or accrued in whole or in part before the date

21 when the property became subject to the trust.

22 (4) On termination of an income interest, the income

23 beneficiary whose interest is terminated, or his or her

24 estate, is entitled to income:

25 (a) undistributed on the date of termination;



1 (b) due but not paid to the trustee on the date of  
2 termination; and

3 (c) in the form of periodic payments (other than  
4 corporate distributions to stockholders), including rent,  
5 interest, or annuities, not due on the date of termination,  
6 accrued from day to day.

7 (5) Corporate distributions to stockholders shall be  
8 treated as due on the day fixed by the corporation for  
9 determination of stockholders of record entitled to  
10 distribution or, if no date is fixed, on the date of  
11 declaration of the distribution by the corporation.

12 NEW SECTION. Section 143. Income earned during  
13 administration of decedent's estate. (1) Unless the will  
14 otherwise provides and subject to subsection (2), all  
15 expenses incurred in connection with the settlement of a  
16 decedent's estate, including debts, funeral expenses, estate  
17 taxes, interest and penalties concerning taxes, family  
18 allowances, fees of attorneys and personal representatives,  
19 and court costs, shall be charged against the principal of  
20 the estate.

21 (2) Unless the will otherwise provides, income from  
22 the property of a decedent's estate after the death of the  
23 testator and before distribution, including income from  
24 property used to discharge liabilities, shall be determined  
25 in accordance with the rules applicable to a trustee under

1 [sections 1 through 164] and distributed as follows:

2 (a) to specific legatees and devisees, the income from  
3 the property bequeathed or devised to them respectively,  
4 less taxes, ordinary repairs, and other expenses of  
5 management and operation of the property, and an appropriate  
6 portion of interest accrued since the death of the testator  
7 and of taxes imposed on income (excluding taxes on capital  
8 gains) that accrue during the period of administration;

9 (b) to all other legatees and devisees, except  
10 legatees of pecuniary bequests not in trust, the balance of  
11 the income, less the balance of taxes, ordinary repairs, and  
12 other expenses of management and operation of all property  
13 from which the estate is entitled to income, interest  
14 accrued since the death of the testator, and taxes imposed  
15 on income (excluding taxes on capital gains) that accrue  
16 during the period of administration, in proportion to their  
17 respective interests in the undistributed property of the  
18 estate computed at times of distribution on the basis of  
19 inventory value.

20 (3) Income received by a trustee under subsection (2)  
21 shall be treated as income of the trust.

22 NEW SECTION. Section 144. Corporate distributions.  
23 (1) Corporate distributions of shares of the distributing  
24 corporation, including distributions in the form of a stock  
25 split or stock dividend, are principal. A right to

1 subscribe to shares or other securities issued by the  
2 distributing corporation accruing to stockholders on account  
3 of their stock ownership and the proceeds of any sale of the  
4 right, are principal.

5 (2) Except to the extent that the corporation  
6 indicates that some part of a corporate distribution is a  
7 settlement of preferred or guaranteed dividends accrued  
8 since the trustee became a stockholder or is in lieu of an  
9 ordinary cash dividend, a corporate distribution is  
10 principal if the distribution is pursuant to any of the  
11 following:

12 (a) a call of shares;

13 (b) a merger, consolidation, reorganization, or other  
14 plan by which assets of the corporation are acquired by  
15 another corporation; or

16 (c) a total or partial liquidation of the corporation,  
17 including any distribution which the corporation indicates  
18 is a distribution in total or partial liquidation or any  
19 distribution of assets, other than cash, pursuant to a court  
20 decree or final administrative order by a government agency  
21 ordering distribution of the particular assets.

22 (3) Distributions made from ordinary income by a  
23 regulated investment company or by a trust qualifying and  
24 electing to be taxed under federal law as a real estate  
25 investment trust are income. All other distributions made by

1 the company or trust, including distributions from capital  
2 gains, depreciation, or depletion, whether in the form of  
3 cash or an option to take new stock or cash or an option to  
4 purchase additional shares, are principal.

5 (4) Except as provided in subsections (1) through (3),  
6 all corporate distributions are income, including cash  
7 dividends, distributions of or rights to subscribe to shares  
8 or securities or obligations of corporations other than the  
9 distributing corporation, and the proceeds of the rights or  
10 property distributions. Except as provided in subsections  
11 (2) and (3), if the distributing corporation gives a  
12 stockholder an option to receive a distribution either in  
13 cash or in its own shares, the distribution chosen is  
14 income.

15 (5) The trustee may rely upon any statement of the  
16 distributing corporation as to any fact relevant under any  
17 provision of this part concerning the source or character of  
18 dividends or distributions of corporate assets.

19 **NEW SECTION. Section 145. Bond premium and discount.**

20 (1) Bonds or other obligations for the payment of money are  
21 principal at their inventory value, except as provided in  
22 subsection (2) for discount bonds. No provision shall be  
23 made for amortization of bond premiums or for accumulation  
24 for discount. The proceeds of sale, redemption, or other  
25 disposition of the bonds or obligations are principal.

1       (2) The increment in value of a bond or other  
2 obligation for the payment of money payable at a future time  
3 in accordance with a fixed schedule of appreciation in  
4 excess of the price at which it was issued is distributable  
5 as income. The increment in value is distributable to the  
6 beneficiary who was the income beneficiary at the time of  
7 increment from the first principal cash available or, if  
8 none is available, when realized by sale, redemption, or  
9 other disposition. Whenever unrealized increment is  
10 distributed as income but out of principal, the principal  
11 shall be reimbursed for the increment when realized.

12       NEW SECTION. Section 146. Business and farming  
13 operations. (1) If a trustee uses any part of the principal  
14 in the continuance of a business of which the trustor was a  
15 sole proprietor or a partner, the net profits of the  
16 business, computed in accordance with recognized methods of  
17 accounting for a comparable business, are income. If a loss  
18 results in any fiscal or calendar year, the loss falls on  
19 principal and may not be carried into any other fiscal or  
20 calendar year for purposes of calculating net income.

21       (2) Recognized methods of accounting for a comparable  
22 business shall be used to determine income from an  
23 agricultural or farming operation, including the raising of  
24 animals or the operation of a nursery.

25       NEW SECTION. Section 147. Disposition of natural

1 resources. (1) If any part of the principal consists of a  
2 right to receive royalties, overriding or limited royalties,  
3 working interests, production payments, net profit  
4 interests, or other interests in minerals or other natural  
5 resources in, on, or under land, the receipts from taking  
6 the natural resources from the land shall be allocated as  
7 follows:

8       (a) If received as rent on a lease or extension  
9 payments on a lease, the receipts are income.

10       (b) If received from a production payment, the  
11 receipts are income to the extent of any factor for interest  
12 or its equivalent provided in the governing instrument.  
13 There shall be allocated to principal the fraction of the  
14 balance of the receipts which the unrecovered cost of the  
15 production payment bears to the balance owed on the  
16 production payment, exclusive of any factor for interest or  
17 its equivalent. The receipts not allocated to principal are  
18 income.

19       (c) If received as a royalty, overriding or limited  
20 royalty or bonus, or from a working, net profit, or any  
21 other interest in minerals or other natural resources,  
22 receipts not provided for in subsections (1)(a) and (1)(b)  
23 shall be apportioned on a yearly basis in accordance with  
24 this paragraph whether or not any natural resource was being  
25 taken from the land at the time the trust was established.

1 The receipts shall be allocated entirely to income or  
2 apportioned between income and principal as the trustee in  
3 its discretion may determine, but the amount added to  
4 principal as an allowance for depletion may not exceed the  
5 lesser of:

6 (i) the percentage of gross receipts allowed as a  
7 deduction for depletion in computing taxable income for  
8 federal income tax purposes or

9 (ii) 50% of the net receipts remaining after payment of  
10 expenses, direct and indirect, computed without allowance  
11 for depletion.

12 (2) This section does not apply to timber, water,  
13 soil, sod, dirt, turf, or mosses.

14 **NEW SECTION. Section 148.** Timber. If any part of the  
15 principal consists of land from which merchantable timber  
16 may be removed, the receipts from taking the timber from the  
17 land shall be allocated in accordance with [section  
18 140(1)(c)].

19 **NEW SECTION. Section 149.** Other property subject to  
20 depletion. Except as provided in [sections 147 and 148], if  
21 the principal consists of property subject to depletion,  
22 including leaseholds, patents, copyrights, royalty rights,  
23 and rights to receive payments on a contract for deferred  
24 compensation, receipts from the property, not in excess of  
25 5% per year of its inventory value, are income, and the

1 balance is principal.

2 **NEW SECTION. Section 150.** Charges against income and  
3 principal. (1) The following charges shall be made against  
4 income:

5 (a) ordinary expenses incurred in connection with the  
6 administration, management, or preservation of the trust  
7 property, including:

8 (i) regularly recurring taxes assessed against any  
9 portion of the principal;

10 (ii) water rates;

11 (iii) premiums on insurance taken upon the interests of  
12 the income beneficiary, remainder beneficiary, or trustee;

13 (iv) interest paid by the trustee; and

14 (v) ordinary repairs;

15 (b) a reasonable allowance for depreciation on  
16 property subject to depreciation under generally accepted  
17 accounting principles, but no allowance may be made for  
18 depreciation on that portion of any real property used by a  
19 beneficiary as a residence or for depreciation of any  
20 property held by the trustee on July 1, 1983, for which the  
21 trustee was not then making an allowance for depreciation;

22 (c) not less than one-half of court costs, attorney  
23 fees, and other fees on periodic judicial accounting, unless  
24 the court directs otherwise;

25 (d) court costs, attorney fees, and fees on other

1 accountings or judicial proceedings if the matter primarily  
2 concerns the income interest, unless the court directs  
3 otherwise;

4 (e) not less than one-half of the trustee's regular  
5 compensation, whether based on a percentage of principal or  
6 income, and all expenses reasonably incurred for current  
7 management of principal and application of income, unless  
8 the court directs otherwise; and

9 (f) any tax levied upon receipts defined as income  
10 under [sections 138 through 150] or the trust instrument and  
11 payable by the trustee.

12 (2) If charges against income are of unusual amount,  
13 the trustee may, by means of reserves or other reasonable  
14 means, charge them over a reasonable period of time and  
15 withhold from distribution sufficient sums to regularize  
16 distributions.

17 (3) (a) The following charges shall be made against  
18 principal:

19 (i) trustee's compensation not chargeable to income  
20 under subsections (1)(d) and (1)(e);

21 (ii) special compensation of trustees;

22 (iii) expenses reasonably incurred in connection with  
23 principal, court costs, and attorney fees primarily  
24 concerning matters of principal; and

25 (iv) trustee's compensation computed on principal as an

1 acceptance, distribution, or termination fee;

2 (b) charges not provided for in subsection (1),  
3 including:

4 (i) the costs of investing and reinvesting principal;

5 (ii) the payments on principal of an indebtedness,  
6 including a mortgage amortized by periodic payments of  
7 principal;

8 (iii) expenses for preparation of property for rental  
9 or sale; and

10 (iv) unless the court directs otherwise, expenses  
11 incurred in maintaining or defending any action to construe  
12 the trust or protect it or the property or assure the title  
13 of any trust property;

14 (c) extraordinary repairs or expenses incurred in  
15 making a capital improvement to principal, including special  
16 assessments, but a trustee may establish an allowance for  
17 depreciation DEPRECIATION out of income to the extent  
18 permitted by subsection (1)(b) and by [section 146];

19 (d) any tax levied upon profit, gain, or other  
20 receipts allocated to principal, notwithstanding  
21 denomination of the tax as an income tax by the taxing  
22 authority; and

23 (e) if an estate or inheritance tax is levied in  
24 respect to a trust in which both an income beneficiary and a  
25 remainder beneficiary have an interest, any amount

1 apportioned to the trust, including interest and penalties,  
2 even though the income beneficiary also has rights in the  
3 principal.

4 (4) Regularly recurring charges payable from income  
5 shall be apportioned to the same extent and in the same  
6 manner that income is apportioned under [section 142].

7 NEW SECTION. **Section 151.** Breach of trust. A  
8 violation by the trustee of any duty that the trustee owes  
9 the beneficiary is a breach of trust.

10 NEW SECTION. **Section 152.** Trustee's liability to  
11 beneficiary for acts of agent. (1) Except as provided in  
12 subsection (2), the trustee is not liable to the beneficiary  
13 for the acts or omissions of an agent.

14 (2) The trustee is liable to the beneficiary for an  
15 act or omission of an agent employed by the trustee in the  
16 administration of the trust that would be a breach of the  
17 trust if committed by the trustee under any of the following  
18 circumstances:

19 (a) whenever the trustee has the power to direct the  
20 act of the agent;

21 (b) whenever the trustee delegates to the agent the  
22 authority to perform an act that the trustee is under a duty  
23 not to delegate;

24 (c) whenever the trustee does not use reasonable care  
25 in the selection of the agent or the retention of the agent

1 selected by the trustee;

2 (d) whenever the trustee does not exercise proper  
3 supervision over the agent's conduct in a case where the  
4 trustee has the power to supervise the agent;

5 (e) whenever the trustee conceals the act of the  
6 agent; or

7 (f) whenever the trustee neglects to take reasonable  
8 steps to compel the agent to redress the wrong in a case  
9 where the trustee knows of the agent's acts or omissions.

10 (3) The liability of a trustee for acts or omissions  
11 of agents that occurred before October 1, 1989, is governed  
12 by prior law and not by this section.

13 NEW SECTION. **Section 153.** Trustee's liability to  
14 beneficiary for acts of cotrustee. (1) Except as provided in  
15 subsection (2), a trustee is not liable to the beneficiary  
16 for a breach of trust committed by a cotrustee.

17 (2) A trustee is liable to the beneficiary for a  
18 breach committed by a cotrustee under any of the following  
19 circumstances:

20 (a) whenever the trustee participates in a breach of  
21 trust committed by the cotrustee;

22 (b) whenever the trustee improperly delegates the  
23 administration of the trust to the cotrustee;

24 (c) whenever the trustee approves, knowingly  
25 acquiesces in, or conceals a breach of trust committed by

1 the cotrustee;

2 (d) whenever the trustee negligently enables the  
3 cotrustee to commit a breach of trust; or

4 (e) whenever the trustee neglects to take reasonable  
5 steps to compel the cotrustee to redress a breach of trust  
6 in a case where the trustee knows or has information from  
7 which the trustee reasonably should have known of the  
8 breach.

9 (3) The liability of a trustee for acts or omissions  
10 of a cotrustee that occurred before October 1, 1989, is  
11 governed by prior law and not by this section.

12 NEW SECTION. Section 154. Trustee's liability to  
13 beneficiary for acts of predecessor. (1) Except as provided  
14 in subsection (2), a successor trustee is not liable to the  
15 beneficiary for a breach of trust committed by a predecessor  
16 trustee.

17 (2) A successor trustee is liable to the beneficiary  
18 for breach of trust involving acts or omissions of a  
19 predecessor trustee in any of the following circumstances:

20 (a) whenever the successor trustee knows or has  
21 information from which the successor trustee reasonably  
22 should have known of a situation constituting a breach of  
23 trust committed by the predecessor trustee, and the  
24 successor trustee improperly permits it to continue;

25 (b) whenever the successor trustee neglects to take

1 reasonable steps to compel the predecessor trustee to  
2 deliver the trust property to the successor trustee; or

3 (c) whenever the successor trustee neglects to take  
4 reasonable steps to redress a breach of trust committed by  
5 the predecessor trustee in a case where the successor  
6 trustee knows or has information from which the successor  
7 trustee should have known of the predecessor trustee's  
8 breach.

9 (3) The liability of a trustee for acts or omissions  
10 of a predecessor trustee that occurred before October 1,  
11 1989, is governed by prior law and not by this section.

12 NEW SECTION. Section 155. Remedies for breach of  
13 trust. (1) If a trustee commits a breach of trust, or  
14 threatens to commit a breach of trust, a beneficiary or  
15 cotrustee of the trust may commence a proceeding for any of  
16 the following purposes that is appropriate:

17 (a) to compel the trustee to perform the trustee's  
18 duties;

19 (b) to enjoin the trustee from committing a breach of  
20 trust;

21 (c) to compel the trustee to redress a breach of trust  
22 by payment of money or otherwise;

23 (d) to appoint a receiver or temporary trustee to take  
24 possession of the trust property and administer the trust;

25 (e) to remove the trustee;

1 (f) subject to [section 210], to set aside acts of the  
2 trustee;

3 (g) to reduce or deny compensation of the trustee;

4 (h) subject to [section 210], to impose an equitable  
5 lien or a constructive trust on trust property; or

6 (i) subject to [section 210], to trace trust property  
7 that has been wrongfully disposed of and recover the  
8 property or its proceeds.

9 (2) The provision of remedies for breach of trust in  
10 subsection (1) does not prevent resort to any other  
11 appropriate remedy provided by statute or the common law.

12 NEW SECTION. Section 156. Remedies for breach  
13 exclusively in equity. The remedies of a beneficiary against  
14 the trustee are exclusively in equity.

15 NEW SECTION. Section 157. Measure of liability for  
16 breach of trust. (1) If the trustee commits a breach of  
17 trust, the trustee is chargeable with any of the following  
18 that is appropriate under the circumstances:

19 (a) any loss or depreciation in value of the trust  
20 estate resulting from the breach of trust, with interest;

21 (b) any profit made by the trustee through the breach  
22 of trust, with interest; or

23 (c) any profit that would have accrued to the trust  
24 estate if the loss of profit is the result of the breach of  
25 trust.

1 (2) If the trustee has acted reasonably under the  
2 circumstances as known to the trustee, the court, in its  
3 discretion, may excuse the trustee in whole or in part from  
4 liability under subsection (1) if it would be equitable to  
5 do so.

6 NEW SECTION. Section 158. Measure of liability for  
7 interest. If the trustee is liable for interest pursuant to  
8 [section 157], the trustee is liable for the greater of the  
9 following amounts:

10 (1) the amount of interest that accrues at the legal  
11 rate on judgments; or

12 (2) the amount of interest actually received.

13 NEW SECTION. Section 159. Limitations on proceedings  
14 against trustee. (1) Unless a claim is previously barred by  
15 adjudication, consent, limitation, or otherwise:

16 (a) If a beneficiary has received an interim or final  
17 account in writing, or other written report, that adequately  
18 discloses the existence of a claim against the trustee for  
19 breach of trust, the claim is barred as to that beneficiary  
20 unless a proceeding to assert the claim is commenced within  
21 3 years after receipt of the account or report. An account  
22 or report adequately discloses existence of a claim if it  
23 provides sufficient information so that the beneficiary  
24 knows of the claim or reasonably should have inquired into  
25 the existence of the claim.



1 (b) If an interim or final account or other report  
2 does not adequately disclose the existence of a claim  
3 against the trustee for breach of trust, the claim is barred  
4 as to that beneficiary unless a proceeding to assert the  
5 claim is commenced within 3 years after the beneficiary  
6 discovered, or reasonably should have discovered, the  
7 existence of the claim.

8 (2) For the purpose of subsection (1), a beneficiary  
9 is considered to have received an account or report, as  
10 follows:

11 (a) in the case of an adult who is reasonably capable  
12 of understanding the account or report, if it is received by  
13 the adult personally;

14 (b) in the case of an adult who is not reasonably  
15 capable of understanding the account or report, if it is  
16 received by the person's legal representative, including a  
17 guardian ad litem or other person appointed for this  
18 purpose; or

19 (c) in the case of a minor, if it is received by the  
20 minor's guardian or, if the minor does not have a guardian,  
21 if it is received by the minor's parent so long as the  
22 parent does not have a conflict of interest.

23 (3) The limitations period applicable to actions by a  
24 beneficiary against a trustee on a claim that arose before  
25 October 1, 1989, is governed by this section, except that a

1 claim arising before October 1, 1989, is not barred by this  
2 section until October 1, 1990.

3 NEW SECTION. Section 160. Exculpation of trustee. (1)  
4 Except as provided in subsection (2), the trustee can be  
5 relieved of liability for breach of trust by provisions in  
6 the trust instrument.

7 (2) A provision in the trust instrument is not  
8 effective to relieve the trustee of liability:

9 (a) for breach of trust committed intentionally, with  
10 gross negligence, or with reckless indifference to the  
11 interest of the beneficiary; or

12 (b) for any profit that the trustee derives from a  
13 breach of trust.

14 NEW SECTION. Section 161. Nonliability for following  
15 instructions under revocable trust. (1) Notwithstanding  
16 [section 160], a trustee of a revocable trust is not liable  
17 to a beneficiary for any act performed or omitted pursuant  
18 to written directions from the person holding the power to  
19 revoke, including a person to whom the power to direct the  
20 trustee is delegated.

21 (2) Subsection (1) applies to a trust that is  
22 revocable in part with respect to the interest of the  
23 beneficiary in that part of the trust property.

24 NEW SECTION. Section 162. Consent of beneficiary to  
25 relieve trustee of liability for breach of trust. (1) Except

1 as provided in subsections (2) and (3), a beneficiary may  
2 not hold the trustee liable for an act or omission of the  
3 trustee as a breach of trust if the beneficiary consented to  
4 the act or omission before or at the time of the act or  
5 omission.

6 (2) The consent of the beneficiary does not preclude  
7 the beneficiary from holding the trustee liable for a breach  
8 of trust in any of the following circumstances:

9 (a) whenever the beneficiary was under an incapacity  
10 at the time of the consent or of the act or omission;

11 (b) whenever the beneficiary at the time consent was  
12 given did not know of his rights and of the material facts  
13 that the trustee knew or should have known and that the  
14 trustee did not reasonably believe that the beneficiary  
15 knew; or

16 (c) whenever the consent of the beneficiary was  
17 induced by improper conduct of the trustee.

18 (3) Whenever the trustee has an interest in the  
19 transaction adverse to the interest of the beneficiary, the  
20 consent of the beneficiary does not preclude the beneficiary  
21 from holding the trustee liable for a breach of trust under  
22 any of the circumstances described in subsection (2) or  
23 whenever the transaction to which the beneficiary consented  
24 was not fair and reasonable to the beneficiary.

25 NEW SECTION. Section 163. Discharge of trustee's

1 liability by release or contract. (1) Except as provided in  
2 subsection (2), a beneficiary may be precluded from holding  
3 the trustee liable for a breach of trust by the  
4 beneficiary's release or contract effective to discharge the  
5 trustee's liability to the beneficiary for that breach.

6 (2) A release or contract is not effective to  
7 discharge the trustee's liability for a breach of trust in  
8 any of the following circumstances:

9 (a) whenever the beneficiary was under an incapacity  
10 at the time of making the release or contract;

11 (b) whenever the beneficiary did not know of his  
12 rights and of the material facts:

13 (i) that the trustee knew or reasonably should have  
14 known; and

15 (ii) that the trustee did not reasonably believe that  
16 the beneficiary knew;

17 (c) whenever the release or contract of the  
18 beneficiary was induced by improper conduct of the trustee;  
19 or

20 (d) whenever the transaction involved a bargain with  
21 the trustee that was not fair and reasonable.

22 NEW SECTION. Section 164. Discharge of trustee's  
23 liability by subsequent affirmance. (1) Except as provided  
24 in subsection (2), if the trustee, in breach of trust,  
25 enters into a transaction that the beneficiary may at his

option reject or affirm, and the beneficiary affirms the transaction, the beneficiary may not thereafter reject it and hold the trustee liable for any loss occurring after the trustee entered into the transaction.

(2) The affirmance of a transaction by the beneficiary does not preclude the beneficiary from holding a trustee liable for a breach of trust if, at the time of the affirmance, any of the following circumstances existed:

(a) the beneficiary was under an incapacity;

(b) the beneficiary did not know of his rights and of the material facts:

(i) that the trustee knew or reasonably should have known; and

(ii) that the trustee did not reasonably believe that the beneficiary knew;

(c) the affirmance was induced by improper conduct of the trustee; or

(d) the transaction involved a bargain with the trustee that was not fair and reasonable.

**NEW SECTION. Section 165.** Subject matter jurisdiction. (1) The district court having jurisdiction over the trust pursuant to [sections 1 through 215] has exclusive jurisdiction of proceedings concerning the internal affairs of trusts.

(2) The district court having jurisdiction over the

trust pursuant to [sections 1 through 215] has concurrent jurisdiction of the following:

(a) actions and proceedings to determine the existence of trusts;

(b) actions and proceedings by or against creditors or debtors of trusts; and

(c) other actions and proceedings involving trustees and third persons.

**NEW SECTION. Section 166.** Full-power court. In proceedings concerning the internal affairs of trusts commenced pursuant to [sections 1 through 215], the court has all the powers of a district court exercising its general jurisdiction.

**NEW SECTION. Section 167.** Principal place of administration of trust. (1) The principal place of administration of the trust is the usual place where the day-to-day activity of the trust is carried on by the trustee or its representative who is primarily responsible for the administration of the trust.

(2) If the principal place of administration of the trust cannot be determined under subsection (1), it shall be determined as follows:

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

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

**NEW SECTION. Section 168. Jurisdiction over trustees and beneficiaries.** Subject to [section 169]:

(1) by accepting the trusteeship of a trust having its principal place of administration in this state the trustee submits personally to the jurisdiction of the court under [sections 1 through 215]; and

(2) to the extent of their interests in the trust, all beneficiaries of a trust having its principal place of administration in this state are subject to the jurisdiction of the court under [sections 1 through 215].

**NEW SECTION. Section 169. Basis of jurisdiction over trust, trust property, and trust parties.** The court may exercise jurisdiction in proceedings under this division on any basis permitted by Rule 4 of the Rules of Civil Procedure.

**NEW SECTION. Section 170. Venue.** (1) The proper county for commencement of a proceeding pursuant to [sections 165 through 178] is either of the following:

(a) in the case of a living trust, the county where the principal place of administration of the trust is located; or

(b) in the case of a testamentary trust, either the county where the decedent's estate is administered or where the principal place of administration of the trust is located.

(2) If a living trust has no trustee, the proper county for commencement of a proceeding for appointing a trustee is the county where the trust property, or some portion of the trust property, is located.

(3) Except as otherwise provided in subsections (1) and (2), the proper county for commencement of a proceeding pursuant to [sections 1 through 215] is determined by the rules applicable to civil actions generally.

**NEW SECTION. Section 171. Jury trial.** There is no right to a jury trial in proceedings under [sections 1 through 215] concerning the internal affairs of trusts.

**NEW SECTION. Section 172. Application of part.** This part applies to notice in proceedings commenced pursuant to [sections 1 through 215] or notice otherwise required or permitted by [sections 1 through 215].

**NEW SECTION. Section 173. Manner of mailing -- when mailing complete.** (1) If a notice or other paper is required or permitted to be mailed, it shall be sent by first-class

1 mail.

2 (2) Mailing is complete when the notice or other paper  
3 is deposited in the mail, postage prepaid, addressed to the  
4 person to whom it is mailed.

5 NEW SECTION. Section 174. Personal delivery instead  
6 of mailing. If a notice or other paper is required or  
7 permitted to be mailed, it may be delivered personally to  
8 the person to whom it is required or permitted to be mailed.

9 NEW SECTION. Section 175. Proof of giving notice --  
10 conclusiveness of order. (1) Proof of the giving of notice  
11 shall be made at or before the hearing to the satisfaction  
12 of the court.

13 (2) If it appears to the satisfaction of the court  
14 that notice has been regularly given or that the party  
15 entitled to notice has waived, the court shall so find in  
16 its order. When the order becomes final, it is conclusive on  
17 all persons, whether or not in being.

18 NEW SECTION. Section 176. Additional notice. (1) The  
19 court may, on its own motion or on motion of a trustee or  
20 other person interested in the trust, require that further  
21 or additional notice be given at any state of the  
22 proceeding. The court may prescribe the form and method of  
23 the notice to be given.

24 (2) A petitioner or other person required to give  
25 notice may cause notice to be given to any person interested

1 in the trust without the need for a court order.

2 NEW SECTION. Section 177. Shortening time. The court  
3 may for good cause shorten the time for giving a notice.

4 NEW SECTION. Section 178. Notice of postponed  
5 hearings. The court may continue or postpone any hearing,  
6 from time to time, in the interest of justice, and no  
7 further notice of the continued or postponed hearing is  
8 required unless otherwise ordered by the court.

9 NEW SECTION. Section 179. Petitioners -- grounds for  
10 petition. (1) Except as provided in [section 68], a trustee  
11 or beneficiary of a trust may petition the court under  
12 [sections 165 through 203] concerning the internal affairs  
13 of the trust or to determine the existence of the trust.

14 (2) Proceedings concerning the internal affairs of a  
15 trust include, but are not limited to, proceedings for any  
16 of the following purposes:

17 (a) determining questions of construction of a trust  
18 instrument;

19 (b) determining the existence or nonexistence of any  
20 immunity, power, privilege, duty, or right;

21 (c) determining the validity of a trust provision;

22 (d) ascertaining beneficiaries and determining to whom  
23 property shall pass or be delivered upon final or partial  
24 termination of the trust, to the extent the determination is  
25 not made by the trust instrument;

1 (e) settling the accounts and passing upon the acts of  
 2 the trustee, including the exercise of discretionary powers;  
 3 (f) instructing the trustee;  
 4 (g) compelling the trustee to report information about  
 5 the trust or account to the beneficiary, if:  
 6 (i) the trustee has failed to submit a requested  
 7 report or account within 60 days after written request of  
 8 the beneficiary; and  
 9 (ii) no report or account has been made within 6 months  
 10 preceding the request;  
 11 (h) granting powers to the trustee;  
 12 (i) fixing or allowing payment of the trustee's  
 13 compensation;  
 14 (j) appointing or removing a trustee;  
 15 (k) accepting the resignation of a trustee;  
 16 (l) compelling redress of a breach of the trust by any  
 17 available remedy;  
 18 (m) approving or directing the modification or  
 19 termination of the trust;  
 20 (n) approving or directing the combination or division  
 21 of trusts;  
 22 (o) amending or conforming the trust instrument in the  
 23 manner required to qualify a decedent's estate for the  
 24 charitable estate tax deduction under federal law, including  
 25 the addition of mandatory governing instrument requirements

1 for a charitable remainder trust as required by final  
 2 regulations and rulings of the United States internal  
 3 revenue service, in any case in which all parties interested  
 4 in the trust have submitted written agreement to the  
 5 proposed changes or written disclaimer of interest;  
 6 (p) authorizing or directing transfer of a trust or  
 7 trust property to or from another jurisdiction;  
 8 (q) directing transfer of a testamentary trust subject  
 9 to continuing court jurisdiction from one county to another;  
 10 (r) approving removal of a testamentary trust from  
 11 continuing court jurisdiction; or  
 12 (s) reforming or excusing compliance with the  
 13 governing instrument of an organization pursuant to [section  
 14 104].  
 15 **NEW SECTION. Section 180. Commencement of proceeding.**  
 16 (1) A proceeding under [sections 165 through 203] is  
 17 commenced by filing a verified petition stating facts  
 18 showing that the petition is authorized under this chapter  
 19 and the grounds of the petition.  
 20 (2) When a petition that requires a hearing is filed  
 21 with the court clerk, the clerk shall set the matter for  
 22 hearing.  
 23 **NEW SECTION. Section 181. Dismissal of petition.** The  
 24 court may dismiss a petition if it appears that the  
 25 proceeding is not reasonably necessary for the protection of

1 the interests of the trustee or beneficiary.

2 **NEW SECTION. Section 182. Notice.** At least 14 days  
3 before the time set for the hearing on the petition, the  
4 petitioner shall cause notice of the time and place of  
5 hearing to be mailed to any of the following persons who are  
6 not petitioners:

- 7 (1) all trustees;
  - 8 (2) all beneficiaries who are entitled to notice; and
  - 9 (3) the attorney general, if the petition is related
- 10 to a charitable trust subject to the jurisdiction of the  
11 attorney general, unless the attorney general waives notice.

12 **NEW SECTION. Section 183. Request for special notice.**

13 (1) If proceedings involving a trust are pending, a  
14 beneficiary of the trust may, in person or by attorney,  
15 serve on the trustee or the trustee's attorney and file with  
16 the court clerk where the proceedings are pending a written  
17 request stating that the beneficiary desires special notice  
18 of the filing of petitions in the proceeding relating to any  
19 or all of the purposes described in [section 179] and giving  
20 an address for receiving notice by mail. Proof of service of  
21 the request on the trustee shall be filed with the court  
22 clerk when the request is filed.

23 (2) Except as provided in subsection (3), after  
24 serving and filing a request and proof of service pursuant  
25 to subsection (1), the beneficiary is entitled to notice

1 pursuant to [section 182].

2 (3) A request for special notice made by a beneficiary  
3 whose right to notice is restricted by [section 70] is not  
4 effective.

5 **NEW SECTION. Section 184. Request for copy of**  
6 **petition.** If a trustee or beneficiary has served and filed  
7 either a notice of appearance, in person or by counsel,  
8 directed to the petitioner or the petitioner's counsel in  
9 connection with a particular petition and proceeding or a  
10 written request for a copy of the petition, and has given an  
11 address to which notice or a copy of the petition may be  
12 mailed or delivered, the petitioner shall cause a copy of  
13 the petition to be mailed to that person within 5 days after  
14 service of the notice of appearance or receipt of the  
15 request.

16 **NEW SECTION. Section 185. Authority to make necessary**  
17 **orders -- temporary trustee.** The court in its discretion may  
18 make any orders and take any other action necessary or  
19 proper to dispose of the matters presented by the petition,  
20 including appointment of a temporary trustee to administer  
21 the trust in whole or in part.

22 **NEW SECTION. Section 186. Appeal.** An appeal may be  
23 taken from the grant or denial of any final order made under  
24 [sections 165 through 203], except the following:

- 25 (1) compelling the trustee to submit an account or

1 report acts as trustee to a beneficiary pursuant to [section  
2 179(2)(g)];

3 (2) accepting the resignation of a trustee pursuant to  
4 [section 179(2)(k)]; or

5 (3) approving removal of a testamentary trust from  
6 continuing court jurisdiction pursuant to [section  
7 179(2)(r)].

8 NEW SECTION. Section 187. Appointment of guardian ad  
9 litem. (1) The court may, on its own motion or on request of  
10 a trustee or other person interested in the trust, appoint a  
11 guardian ad litem at any stage of a proceeding concerning  
12 the trust to represent the interest of any of the following  
13 persons, if the court determines that representation of the  
14 interest otherwise would be inadequate:

- 15 (a) a minor;
- 16 (b) an incapacitated person;
- 17 (c) an unborn person;
- 18 (d) an unascertained person;
- 19 (e) a person whose identity or address is unknown; or
- 20 (f) a designated class of persons who are not  
21 ascertained or are not in being.

22 (2) If not precluded by a conflict of interest, a  
23 guardian ad litem may be appointed to represent several  
24 persons or interests.

25 (3) The reasonable expenses of the guardian ad litem,

1 including compensation and attorney's fees, shall be  
2 determined by the court and paid as the court orders, either  
3 out of trust property or by the petitioner.

4 (4) If no guardian ad litem is appointed, an unborn  
5 person or an unascertained person is bound by an order to  
6 the extent his or her interest is adequately represented by  
7 another party having a substantially identical interest in  
8 the proceeding.

9 NEW SECTION. Section 188. Intermittent judicial  
10 intervention in trust administration. The administration of  
11 trusts is intended to proceed expeditiously and free of  
12 judicial intervention, subject to the jurisdiction of the  
13 court.

14 NEW SECTION. Section 189. Enforcement of  
15 beneficiary's rights under charitable trust by attorney  
16 general. In a case involving a charitable trust subject to  
17 the jurisdiction of the attorney general, the attorney  
18 general may petition under [sections 165 through 203].

19 NEW SECTION. Section 190. Application of part. (1)  
20 [Sections 190 through 195] apply to all of the following:

21 (a) a trust that is subject to [sections 1 through  
22 215]; and

23 (b) any other trust to which the provisions of  
24 [sections 165 through 203] are made applicable by statute or  
25 trust instrument.



1 (2) [Sections 190 through 195] do not prevent the  
2 transfer of the place of administration of a trust or of  
3 trust property to another jurisdiction by any other  
4 available means.

5 NEW SECTION. Section 191. Transfer of place of  
6 administration or property from Montana. (1) The court may  
7 make an order for the transfer of the place of  
8 administration of a trust or the transfer of some or all of  
9 the trust property to a jurisdiction outside this state as  
10 provided in [sections 165 through 203].

11 (2) Except as otherwise provided in [sections 190  
12 through 195], proceedings under [sections 165 through 203]  
13 are governed by [sections 190 through 195].

14 NEW SECTION. Section 192. Contents of petition. The  
15 petition for transfer shall set forth all of the following:

16 (1) the names and places of residence of the  
17 following:

18 (a) the trustee administering the trust in this state;  
19 and

20 (b) the trustee, including any domiciliary trustee,  
21 who will administer the trust or trust property in the other  
22 jurisdiction;

23 (2) the names, ages, and places of residence of the  
24 living beneficiaries, as far as known to the petitioner;

25 (3) whether the trustee who will administer the trust

1 in the other jurisdiction has agreed to accept the trust. If  
2 so, the acceptance or a copy shall be attached as an exhibit  
3 to the petition or otherwise filed with the court;

4 (4) a general statement of the qualifications of the  
5 trustee who will administer the trust in the other  
6 jurisdiction and the amount of fiduciary bond, if any. If  
7 the trustee is an individual, the statement shall include  
8 the trustee's age;

9 (5) a general statement of the nature and value of the  
10 property of any trust of the same trustor being administered  
11 in the other jurisdiction by the trustee who will administer  
12 the trust in the other jurisdiction;

13 (6) the name of the court, if any, having jurisdiction  
14 of the trustee in the other jurisdiction or of its accounts  
15 or in which a proceeding may be had with respect to  
16 administration of the trust or the trustee's accounts;

17 (7) a statement of the character, condition, location,  
18 and value of the trust property sought to be transferred;

19 (8) whether there is any pending civil action in this  
20 state against the trustee arising out of the administration  
21 of the trust sought to be transferred; and

22 (9) a statement of the reasons for the transfer.

23 NEW SECTION. Section 193. Notice and hearing. (1) At  
24 least 14 days before the time set for the hearing on the  
25 petition, the petitioner shall cause notice of the time and

1 place of the hearing to be mailed to each of the persons  
2 named in the petition at their respective addresses as  
3 stated in the petition.

4 (2) Any person interested in the trust, as trustee,  
5 beneficiary, or otherwise, may appear and file written  
6 grounds in opposition to the petition.

7 NEW SECTION. Section 194. Order granting transfer.  
8 The court may, in its discretion, grant the petition and  
9 order the trustee to transfer the trust property or to  
10 transfer the place of administration of the trust to the  
11 other jurisdiction if, after hearing, all of the following  
12 appear to the court:

13 (1) the transfer of the trust property to a trustee in  
14 another jurisdiction, or the transfer of the place of  
15 administration of the trust to another jurisdiction, will  
16 promote the best interests of the trust and those interested  
17 in it, taking into account the interest in the economical  
18 and convenient administration of the trust;

19 (2) the transfer will not violate the trust  
20 instrument; and

21 (3) any new trustee to whom the trust property is to  
22 be transferred is qualified, willing, and able to administer  
23 the trust or trust property under the trust instrument.

24 NEW SECTION. Section 195. Manner of transfer --  
25 discharge of trustee. If a transfer is ordered under this

1 chapter, the court may direct the manner of transfer and  
2 impose terms and conditions as may be just, including, but  
3 not limited to, a requirement for the substitution of a  
4 successor trustee in any pending litigation in this state.  
5 The delivery of property in accordance with the order of the  
6 court is a discharge of the trustee in relation to all  
7 property embraced in the order.

8 NEW SECTION. Section 196. Application. (1) [Sections  
9 196 through 203] apply to a trust, or portion thereof,  
10 administered in a jurisdiction outside this state.

11 (2) [Sections 196 through 203] do not prevent the  
12 transfer of the place of administration of a trust or trust  
13 property to this state by any other available means.

14 NEW SECTION. Section 197. Transfer of place of  
15 administration or property to Montana. (1) The court may  
16 make an order accepting the transfer of the place of  
17 administration of a trust from another jurisdiction to this  
18 state or the transfer of some or all of the trust property  
19 in another jurisdiction to a trustee in this state as  
20 provided in [sections 196 through 203].

21 (2) Except as otherwise provided in [sections 196  
22 through 203], proceedings under [sections 196 through 203]  
23 are governed by this chapter.

24 NEW SECTION. Section 198. Venue. (1) If the petition  
25 requests that a resident of this state be appointed trustee,

1 the petition shall be filed in the court of the county where  
2 the proposed principal place of administration of the trust  
3 pursuant to [section 167] is located.

4 (2) If the petition requests that only a nonresident  
5 of this state be appointed trustee, the petition shall be  
6 filed in the court of the county where either:

7 (a) any beneficiary resides; or

8 (b) a substantial portion of the trust property to be  
9 transferred is located or will be located.

10 **NEW SECTION. Section 199.** Contents of petition. The  
11 petition for transfer shall set forth all of the following:

12 (1) the names and places of residence of the  
13 following:

14 (a) the trustee administering the trust in the other  
15 jurisdiction; and

16 (b) the proposed trustee to whom administration of the  
17 trust or trust property will be transferred;

18 (2) the names, ages, and places of residence of all  
19 living beneficiaries, as far as known to the petitioner;

20 (3) whether administration of the trust has been  
21 subject to supervision in a jurisdiction outside this state.  
22 If so, the petition shall state whether a petition or  
23 appropriate request for transfer of place of administration  
24 of the trust or trust property to this state has been filed,  
25 if necessary, with the court in the other jurisdiction, and

1 the status of the petition or request.

2 (4) whether the trustee proposed to administer the  
3 trust in this state has agreed to accept the trust in this  
4 state. If the trustee has agreed, the acceptance shall be  
5 attached as an exhibit to the petition or otherwise filed  
6 with the court.

7 (5) a general statement of the qualifications of the  
8 trustee proposed to administer the trust in this state and  
9 the amount of any bond to be requested. If the trustee is an  
10 individual, the statement shall include the trustee's age.

11 (6) a copy of the trust instrument or a statement of  
12 the terms of the trust instrument in effect at the time the  
13 petition is filed, including all amendments thereto;

14 (7) a statement of the character, condition, location,  
15 and value of the trust property sought to be transferred;  
16 and

17 (8) a statement of the reasons for the transfer.

18 **NEW SECTION. Section 200.** Notice and hearing. (1) At  
19 least 14 days before the time set for the hearing on the  
20 petition, the petitioner shall cause notice of the time and  
21 place of the hearing to be mailed to each of the persons  
22 named in the petition at their respective addresses as  
23 stated in the petition.

24 (2) Any person interested in the trust, as trustee,  
25 beneficiary, or otherwise, may appear and file written

1 grounds in opposition to the petition.

2 **NEW SECTION. Section 201.** Order accepting transfer  
3 and appointing trustee. (1) The court may, in its  
4 discretion, grant the petition and issue an order accepting  
5 transfer of trust property or the place of administration of  
6 the trust to this state and appoint a trustee to administer  
7 the trust in this state, if, after hearing, all of the  
8 following appear to the court:

9 (a) the transfer of the trust property to a trustee in  
10 this state, or the transfer of the place of administration  
11 of the trust to this state, will promote the best interests  
12 of the trust and those interested in it, taking into account  
13 the interest in the economical and convenient administration  
14 of the trust;

15 (b) the transfer will not violate the trust  
16 instrument;

17 (c) the trustee appointed by the court to administer  
18 the trust in this state, and to whom the trust property is  
19 to be transferred, is qualified, willing, and able to  
20 administer the trust or trust property under the trust  
21 instrument; and

22 (d) the proper court in the other jurisdiction has  
23 approved the transfer if approval is necessary under the law  
24 of the other jurisdiction.

25 (2) If the court grants the petition under subsection

1 (1), the court shall require the trustee to give a bond, if  
2 necessary under the law of the other jurisdiction or of this  
3 state, and may require bond as provided in [section 49].

4 **NEW SECTION. Section 202.** Conditional order accepting  
5 transfer. If appropriate to facilitate transfer of the trust  
6 property or the place of administration of a trust to this  
7 state, the court may issue a conditional order appointing a  
8 trustee to administer the trust in this state and indicating  
9 that transfer to this state will be accepted if transfer is  
10 approved by the proper court of the other jurisdiction.

11 **NEW SECTION. Section 203.** Administration of  
12 transferred trust. A trust transferred to this state  
13 pursuant to [sections 165 through 203] shall be administered  
14 in the same manner as a trust of that type created in this  
15 state.

16 **NEW SECTION. Section 204.** Personal liability of  
17 trustee to third persons on contracts. (1) Unless otherwise  
18 provided in the contract or in [sections 165 through 203],  
19 a trustee is not personally liable on a contract properly  
20 entered into in the trustee's fiduciary capacity in the  
21 course of administration of the trust unless the trustee  
22 fails to reveal the trustee's representative capacity or  
23 identify the trust in the contract.

24 (2) The personal liability of a trustee on a contract  
25 entered into before October 1, 1989, is governed by prior

1 law and not by this section.

2 NEW SECTION. Section 205. Personal liability of  
3 trustee arising from ownership or control of trust estate.  
4 A trustee is personally liable for obligations arising from  
5 ownership or control of trust property only if the trustee  
6 is personally at fault.

7 NEW SECTION. Section 206. Personal liability of  
8 trustee for torts. A trustee is personally liable for torts  
9 committed in the course of administration of the trust only  
10 if the trustee is personally at fault.

11 NEW SECTION. Section 207. Liability of dissenting  
12 cotrustee to third persons. (1) A cotrustee who does not  
13 join in exercising a power held by three or more cotrustees  
14 is not liable to third persons for the consequences of the  
15 exercise of the power.

16 (2) A dissenting cotrustee who joins in an action at  
17 the direction of the majority cotrustees is not liable to  
18 third persons for the action if the dissenting cotrustee  
19 expresses the dissent in writing to any other cotrustee at  
20 or before the time the action is taken.

21 (3) This section does not excuse a cotrustee from  
22 liability for failure to discharge the cotrustee's duties as  
23 a trustee.

24 NEW SECTION. Section 208. Assertion of claims against  
25 trust. A claim based on a contract entered into by a trustee

1 in the trustee's representative capacity, on an obligation  
2 arising from ownership or control of trust property, or on a  
3 tort committed in the course of administration of the trust  
4 may be asserted against the trust by proceeding against the  
5 trustee in the trustee's representative capacity, whether or  
6 not the trustee is personally liable on the claim.

7 NEW SECTION. Section 209. Liability as between  
8 trustee and trust estate. The question of liability as  
9 between the trust estate and the trustee personally may be  
10 determined in a proceeding under [section 179].

11 NEW SECTION. Section 210. Protection of third person  
12 dealing with trustee. With respect to a third person dealing  
13 with a trustee or assisting a trustee in the conduct of a  
14 transaction, if the third person acts for a valuable  
15 consideration and without actual knowledge that the trustee  
16 is exceeding the trustee's powers or improperly exercising  
17 them:

18 (1) the third person is not bound to inquire whether  
19 the trustee has power to act or is properly exercising a  
20 power and may assume without inquiry the existence of a  
21 trust power and its proper exercise; and

22 (2) the third person is fully protected in dealing  
23 with or assisting the trustee just as if the trustee has and  
24 is properly exercising the power the trustee purports to  
25 exercise.

1        NEW SECTION. Section 211. Application of property  
2 delivered to trustee by third person. A third person is not  
3 bound to ensure the proper application of trust property  
4 paid or delivered to the trustee.

5        NEW SECTION. Section 212. Protection of third person  
6 dealing with former trustee. If a third person acting for a  
7 valuable consideration enters into a transaction with a  
8 former trustee without knowledge that the person is no  
9 longer a trustee, the third person is fully protected just  
10 as if the former trustee were still a trustee.

11       NEW SECTION. Section 213. Effects on real property  
12 transactions. (1) This section relates only to conveyances  
13 of real property to or from a trust, and supplements, but  
14 does not modify other substantive provisions of [sections 1  
15 through 215] relating to the creation or validity of trusts.  
16 This section does not affect conveyances recorded prior to  
17 October 1, 1989.

18       (2) Except as otherwise provided in [sections 1  
19 through 215], a conveyance of real property to a trustee  
20 designated as such in the conveyance vests the whole estate  
21 conveyed in the trustee, subject only to the trustee's  
22 duties. The beneficiaries of the trust take no estate or  
23 interest in the real property, but may determine or enforce  
24 the terms of the trust as provided in [sections 1 through  
25 215].

1       (3) An instrument creating or amending a trust need  
2 not be recorded, but may be if properly acknowledged.

3       (4) If there is no clear reference to or designation  
4 of a grantee as trustee in a conveyance (nor in a separately  
5 recorded instrument recorded in the same county as the  
6 conveyance and describing the same property as described in  
7 the conveyance), the conveyance shall be considered to be  
8 absolute to the grantee, in favor of purchasers or  
9 encumbrancers from the grantee, who were without actual  
10 knowledge and who acted for a valuable consideration,  
11 despite any valid trust which may exist.

12       (5) Unless limitations upon a trustee's power or  
13 authority are set forth in the recorded conveyance of real  
14 property to the trustee or in a separate trust instrument  
15 (or portion thereof, or abstract thereof) recorded in the  
16 same county, there are no limitations upon the trustee's  
17 power or authority to convey or encumber the real property  
18 in favor of third persons who were without actual knowledge  
19 and who acted for a valuable consideration. A separate trust  
20 instrument incorporated by reference in a conveyance to a  
21 trustee cannot limit the trustee's power or authority to  
22 convey or encumber unless the limitations are set forth in  
23 the trust instrument (or portion thereof or abstract  
24 thereof) which is also recorded in the county where the real  
25 property is located. An amendment to a recorded trust

1 instrument may not affect the power or authority of a  
2 trustee to convey or encumber unless it is also recorded in  
3 the same place.

4 (6) A subsequent conveyance from a person designated  
5 in the original conveyance as trustee (or from his successor  
6 trustee) conveys the whole estate vested in the trustee,  
7 except as limited by the terms of the conveyance. The  
8 identity of any successor trustee may be established by a  
9 recorded affidavit of the successor trustee specifying his  
10 name and address and the date and circumstances of his  
11 succession, and confirming that he is currently lawfully  
12 serving in such capacity.

13 (7) In an action or proceeding by a third person  
14 involving the real property granted to a trustee, the person  
15 designated as trustee in the original conveyance, or the  
16 successor trustee as established in subsection (6), or, if  
17 none, the person then actually serving as trustee, or, if  
18 none, any beneficiary designated by the court to represent  
19 the interests of the beneficiaries, shall be considered the  
20 only necessary representative of the trust and of all  
21 persons with an interest therein. A judgment is binding upon  
22 and conclusive against the trust and all persons interested  
23 therein as to all matters finally adjudicated in the  
24 judgment.

25 NEW SECTION. **Section 214.** Creditor's rights against

1 revocable trust during trustor's lifetime. If the trustor  
2 retains the power to revoke the trust in whole or in part,  
3 the trust property is subject to the claims of creditors of  
4 the trustor to the extent of the power of revocation during  
5 the lifetime of the trustor.

6 NEW SECTION. **Section 215.** Creditor's rights against  
7 revocable trust after trustor's death. Upon the death of a  
8 trustor who had retained the power to revoke the trust in  
9 whole or in part, the property that was subject to the power  
10 of revocation at the time of the trustor's death is subject  
11 to the claims of creditors of the decedent trustor's estate  
12 and to the expenses of administration of the estate to the  
13 extent that the decedent trustor's estate is inadequate to  
14 satisfy those claims and expenses.

15 **Section 216.** Section 2-2-103, MCA, is amended to read:

16 "2-2-103. Public trust. (1) The holding of public  
17 office or employment is a public trust, created by the  
18 confidence which the electorate reposes in the integrity of  
19 public officers, legislators, and employees. A public  
20 officer, legislator, or employee shall carry out his duties  
21 for the benefit of the people of the state.

22 (2) A public officer, legislator, or employee whose  
23 conduct departs from his fiduciary duty is liable to the  
24 people of the state as a trustee of property, is liable to a  
25 beneficiary under ~~72-20-203(2)~~ [section 77], and shall

1 suffer such other liabilities as a private fiduciary would  
 2 suffer for abuse of his trust. The county attorney of the  
 3 county where the trust is violated may bring appropriate  
 4 judicial proceedings on behalf of the people. Any moneys  
 5 collected in such actions shall be paid to the general fund  
 6 of the aggrieved agency.

7 (3) The following sections set forth various rules of  
 8 conduct, the transgression of any of which is, as such, a  
 9 violation of fiduciary duty, and various ethical principles,  
 10 the transgression of any of which is not, as such, a  
 11 violation of fiduciary duty."

12 **Section 217.** Section 31-2-209, MCA, is amended to  
 13 read:

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

17 (1) if it gives a preference dependent upon any  
 18 condition or contingency or with any power of revocation  
 19 reserved;

20 (2) if it tends to coerce any creditor to release or  
 21 compromise his demand;

22 (3) if it provides for the payment of any claim known  
 23 by the assignor to be false or fraudulent or for the payment  
 24 of more upon any claim than is known to be justly due from  
 25 the assignor;

1 (4) if it reserves any interest in the assigned  
 2 property or in any part thereof to the assignor or for his  
 3 benefit, before all existing debts are paid;

4 (5) if it confers upon the assignee any power which,  
 5 if exercised, might prevent or delay the immediate  
 6 conversion of the assigned property to the purposes of the  
 7 trust;

8 (6) if it exempts him from liability for neglect of  
 9 duty or misconduct;

10 (7) if it violates 72-20-203~~(1)~~ [section 77]."

11 **Section 218.** Section 70-20-101, MCA, is amended to  
 12 read:

13 "70-20-101. Transfer to be in writing -- statute of  
 14 frauds. No estate or interest in real property, other than  
 15 an estate at will or for a term not exceeding 1 year,~~or any~~  
 16 ~~trust-over-or-power-concerning-it-or-in-any-manner--relating~~  
 17 ~~thereto~~ can be created, granted, assigned, surrendered, or  
 18 declared otherwise than by operation of law or a conveyance  
 19 or other instrument in writing, subscribed by the party  
 20 creating, granting, assigning, surrendering, or declaring it  
 21 or by his lawful agent thereunto authorized by writing."

22 **Section 219.** Section 82-1-304, MCA, is amended to  
 23 read:

24 "82-1-304. Administration of the trust. (1) The  
 25 administration of the trust shall comply with the



1 appropriate provisions regulating trusts contained in Title  
2 72.

3 (2) No trustee or attorney fees may be paid from the  
4 trust proceeds.

5 (3) All bonuses, rental payments, royalties, and other  
6 income shall be paid to the trustee until the trust is  
7 terminated and notice of its termination given to all  
8 interested parties. The trustee shall distribute all money  
9 held in the trust to the person or persons entitled to it  
10 upon the order of the district court.

11 (4) A trust in favor of unlocatable owners shall be in  
12 force until the unlocatable owners of the mineral interest  
13 in question have successfully claimed the share of funds  
14 held in trust and filed the notice provided in 82-1-306.

15 (5) The trustee shall invest funds under his  
16 management in the manner of a prudent man, as defined--in  
17 ~~72-21-104~~ provided in [section 89]. Fifty percent of the  
18 interest earned on each trust shall be credited to the  
19 general fund of the county in which the mineral interest is  
20 located to defray the costs of administration.

21 (6) Funds held in the trusts are subject to the  
22 provisions governing abandoned property contained in Title  
23 70, chapter 9."

24 NEW SECTION. Section 220. Repealer. Sections  
25 72-12-101 through 72-12-103, Title 72, chapters 20 through

1 25, sections 72-27-101 and 72-27-102, MCA, are repealed.

2 NEW SECTION. Section 221. Codification instruction.  
3 [Sections 1 through 215] are intended to be codified as an  
4 integral part of Title 72 and the provisions of Title 72  
5 apply to [sections 1 through 215].

-End-

(70)

Free Conference Committee Report  
on SB 333  
Report No. 1, April 5, 1989  
page 1 of 2

Mr President and Mr. Speaker:

We, your Free Conference Committee on SB 333 met and considered:

The House Committee of the Whole amendments to SB 333 (third reading copy -- blue) dated March 9, 1989.

We recommend that the House Committee of the Whole amendments be rejected and that SB 333 (reference copy -- salmon) be amended as follows:

1. Page 49, lines 3 through 16.

Strike: "IF" on line 3 through "CUSTODIAN" on line 16

Insert: "In the absence of an express provision to the contrary in a trust instrument, whenever the instrument directs or permits investment in obligations of the United States government, the trustee has the power to invest in those obligations directly or in the form of securities or other interests in an open-end or closed-end management type investment company or investment trust registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 through 80a-64), as amended, or an investment vehicle authorized for the collective investment of trust funds pursuant to section 9.18 of Title 12 of the Code of Federal Regulations, if:

(1) the portfolio of the investment company, investment trust, or investment vehicle is limited to United States government obligations and repurchase agreements fully collateralized by United States government obligations; and

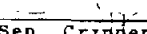
(2) the investment company, investment trust, or investment vehicle takes delivery of the collateral for any repurchase agreement, either directly or through an authorized custodian"

(70A)


And that this Conference Committee Report be adopted.


FOR THE SENATE

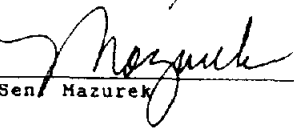
FOR THE HOUSE

  
Sen. Crygden, Chairman

  
Rep. Spaeth

  
Sen. Bishop

  
Rep. Addy

  
Sen. Mazurek

  
Rep. Mercer

ADOPT

REJECT

## SENATE BILL NO. 333

INTRODUCED BY MAZUREK, CRIPPEN, BISHOP

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE LAWS RELATING TO TRUSTS AND TRUSTEES; AMENDING SECTIONS 2-2-103, 31-2-209, 70-20-101, AND 82-1-304, MCA; AND REPEALING SECTIONS 72-12-101 THROUGH 72-12-103, TITLE 72, CHAPTERS 20 THROUGH 25, AND SECTIONS 72-27-101 AND 72-27-102, MCA."

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

NEW SECTION. Section 1. Short title. [Sections 1 through 215] shall be known and may be cited as the "Trust Code".

NEW SECTION. Section 2. General rule concerning application of trust code. Except as otherwise provided by statute:

(1) After September 30, 1989, [sections 1 through 215] apply to all trusts regardless of when they were created, unless in the opinion of the court, application of a particular provision of [sections 1 through 215] would substantially interfere with the rights of the parties and other interested persons, in which case the particular provision of [sections 1 through 215] does not apply and prior law applies.

(2) After September 30, 1989, [sections 1 through 215] apply to all proceedings concerning trusts whenever commenced, unless in the opinion of the court, application of a particular provision of [sections 1 through 215] would substantially interfere with the effective conduct of the proceedings or the rights of the parties and other interested persons, in which case the particular provision of [sections 1 through 215] does not apply and prior law applies.

NEW SECTION. Section 3. Common law as law of state. Except to the extent that the common law rules governing trusts are modified by statute, the common law as to trusts is the law of this state.

NEW SECTION. Section 4. Constructive and resulting trusts not affected. Other than [sections 19 through 23], nothing in [sections 1 through 215] affects the law relating to constructive or resulting trusts.

NEW SECTION. Section 5. Application of code to charitable trusts. Unless otherwise provided by statute, [sections 1 through 215] apply to charitable trusts that are subject to the jurisdiction of the attorney general.

NEW SECTION. Section 6. Laws affecting construction and operation of wills apply to trusts. (1) Title 72, chapter 2, part 5 and 72-3-901 apply to the construction and operation of trusts, except as provided in subsection (2).

(2) This section does not apply to any trust if its terms expressly or by necessary implication make this section inapplicable to it.

(3) For purposes of [sections 1 through 215], references in Title 72, chapter 2, part 5 and in 72-3-901 to a "testator" refer to the trustor, references to a "will" refer to a trust, references to a "devisee" refer to a trust beneficiary, and references to a "devise" refer to a trust distribution.

**NEW SECTION. Section 7. Definitions.** As used in [sections 1 through 215] unless the context requires otherwise the following definitions apply:

(1) "Beneficiary" means a person who has any present or future interest, vested or contingent, and also includes the owner of an interest by assignment or other transfer and, as it relates to a charitable trust, includes any person entitled to enforce the trust.

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

(3) "Property" includes both real and personal property or any interest therein and means anything that may be the subject of ownership.

(4) "Trust" when not qualified by the word "resulting" or "constructive", includes any express trust, private or charitable, with additions thereto, wherever and however

created. It also includes a trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust. The term does not include conservatorships, personal representatives, custodial arrangements pursuant to chapter 26 of this title, business trusts providing for certificates to be issued to beneficiaries, common trust funds, voting trusts, security arrangements, liquidation trusts, and trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind and any arrangement under which a person is nominee or escrowee for another.

(5) "Trustee" means the person holding property in trust. The term includes an original, additional, or successor trustee, whether or not appointed or confirmed by a court.

(6) "Trustor" means the person who creates a trust.

(7) "Trust company" means an entity which has qualified to engage in and conduct a trust business in this state.

(8) "Trust property" means the property held in trust.

**NEW SECTION. Section 8. Reference to statutes --** amendments and additions. Whenever a reference is made to any portion of [sections 1 through 215] or to any other law, the reference applies to all amendments and additions made.

**NEW SECTION. Section 9. Methods of creating trust.**

Subject to other provisions of [sections 1 through 72], a trust may be created by any of the following methods:

- (1) a declaration by the owner of property that the owner holds the property as trustee;
- (2) a transfer of property by the owner during the owner's lifetime to another person as trustee;
- (3) a testamentary transfer of property by the owner to another person as trustee;
- (4) an exercise of a power of appointment to another person as trustee; or
- (5) an enforceable promise to create a trust.

**NEW SECTION. Section 10. Intention to create trust.**

A trust is created only if the trustor properly manifests an intention to create a trust.

**NEW SECTION. Section 11. Trust property. (1) A trust is created only if there is trust property.**

(2) The requirement of subsection (1) may be satisfied if the trust (or its trustee) is designated to be beneficiary of the proceeds of an insurance contract, an annuity contract, an employee benefit plan, an individual retirement account, or similar device, even though the designation may be revoked.

**NEW SECTION. Section 12. Trust purpose. A trust may be created for any purpose that is not illegal or against**

public policy.

**NEW SECTION. Section 13. Trust for indefinite or general purposes.** A trust created for an indefinite or general purpose is not invalid for that reason if it can be determined with reasonable certainty that a particular use of the trust property comes within that purpose.

**NEW SECTION. Section 14. Designation of beneficiary.**

(1) A trust, other than a charitable trust, is created only if there is a beneficiary.

(2) The requirement of subsection (1) is satisfied if the trust instrument provides for either of the following:

- (a) a beneficiary or class of beneficiaries that is ascertainable with reasonable certainty or that is sufficiently described so it can be determined that some person meets the description or is within the class; or
- (b) a grant of power to the trustee or some other person to select the beneficiaries based on a standard or in the discretion of the trustee or other person.

**NEW SECTION. Section 15. Designation of trust or trustee as beneficiary.** (1) A trust or trustee may be designated as the beneficiary of the proceeds of an insurance contract, an annuity contract, an employee benefit plan, an individual retirement account, or similar device if the designation is made in accordance with the contract, plan, account, or device.

(2) Subsection (1) applies even though the trust or trustee is named or to be named by will or trust and whether or not the will or trust is in existence at the time of the designation.

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

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

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

(3) by operation of law.

NEW SECTION. Section 17. Consideration. Consideration is not required to create a trust, but a promise to create a trust in the future is enforceable only if the requirements for an enforceable contract are satisfied.

NEW SECTION. Section 18. Exception to doctrine of merger. If a trust provides for one or more successor beneficiaries after the death of the trustor, the trust is not invalid, merged, or terminated in either of the following circumstances:

(1) where there is one trustor who is the sole trustee and the sole beneficiary during the trustor's lifetime; or

(2) where there are two or more trustors, one or more of whom are trustees, and the beneficial interest in the

trust is in one or more of the trustors during the lifetime of the trustors.

NEW SECTION. Section 19. Resulting trust upon failure of trust. Where the owner of property gratuitously transfers it and manifests in the trust instrument an intention that the transferee should hold the property in trust but the trust fails, the transferee holds the trust estate as a resulting trust for the transferor or his estate, unless:

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

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

NEW SECTION. Section 20. Resulting trust upon full performance of trust. Where the owner of property gratuitously transfers it subject to a trust which is properly declared and which is fully performed without exhausting the trust estate, the trustee holds the surplus as a resulting trust for the transferor or his estate, unless the transferor manifested in the trust instrument an intention that no resulting trust of the surplus should arise.

NEW SECTION. Section 21. Purchase money resulting trust. (1) Where a transfer of property is made to one

1 person and the purchase price is paid by another, a  
2 resulting trust arises in favor of the person who paid the  
3 purchase price.

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

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

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

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

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

20 NEW SECTION. Section 22. Constructive trust. A  
21 constructive trust arises when a person holding title to  
22 property is subject to an equitable duty to convey it to  
23 another on the ground that the person holding title would be  
24 unjustly enriched if he were permitted to retain it.

25 NEW SECTION. Section 23. Resulting trusts,

1 constructive trusts -- statute of frauds. Resulting trusts  
2 and constructive trusts are considered to arise by operation  
3 of law and are valid under [section 16(3)].

4 NEW SECTION. Section 24. Restraint on transfer of  
5 income. Except as provided in [section 28], if the trust  
6 instrument provides that a beneficiary's interest is not  
7 subject to voluntary or involuntary transfer, the  
8 beneficiary's interest in income under the trust may not be  
9 transferred and is not subject to enforcement of a money  
10 judgment until paid to the beneficiary.

11 NEW SECTION. Section 25. Restraint on transfer of  
12 principal. (1) Except as provided in subsection (2) and in  
13 [section 28], if the trust instrument provides that a  
14 beneficiary's interest in principal is not subject to  
15 voluntary or involuntary transfer, the beneficiary's  
16 interest in principal may not be transferred and is not  
17 subject to enforcement of a money judgment until paid to the  
18 beneficiary.

19 (2) After an amount of principal has become due and  
20 payable to the beneficiary under the trust instrument, upon  
21 petition to the court by a judgment creditor, the court may  
22 make an order directing the trustee to satisfy the money  
23 judgment out of that principal amount. The court in its  
24 discretion may issue an order directing the trustee to  
25 satisfy all or part of the judgment out of that principal

1 amount.

2 **NEW SECTION. Section 26. Trust for support.** Except as  
3 provided in [section 28], if the trust instrument provides  
4 that the trustee shall pay income or principal or both for  
5 the education or support of a beneficiary, the beneficiary's  
6 interest in income or principal or both under the trust may  
7 not be transferred and is not subject to the enforcement of  
8 a money judgment until paid to the beneficiary.

9 **NEW SECTION. Section 27. Transferee or creditor**  
10 **cannot compel trustee to exercise discretion -- liability of**  
11 **trustee for payment to or for beneficiary.** (1) If the trust  
12 instrument provides that the trustee shall pay to or for the  
13 benefit of a beneficiary so much of the income or principal  
14 or both as the trustee in the trustee's discretion sees fit  
15 to pay, a transferee or creditor of the beneficiary may not  
16 compel the trustee to pay any amount that may be paid only  
17 in the exercise of the trustee's discretion.

18 (2) If the trustee has knowledge of the transfer of  
19 the beneficiary's interest or has been served with process  
20 by a judgment creditor seeking to reach the beneficiary's  
21 interest, and the trustee pays to or for the benefit of the  
22 beneficiary any part of the income or principal that may be  
23 paid only in the exercise of the trustee's discretion, the  
24 trustee is liable to the transferee or creditor to the  
25 extent that the payment to or for the benefit of the

1 beneficiary impairs the right of the transferee or creditor.  
2 This subsection does not apply if the beneficiary's interest  
3 in the trust is subject to a restraint on transfer that is  
4 valid under [section 24 or 25].

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

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

12 **NEW SECTION. Section 28. where trustor is**  
13 **beneficiary.** (1) If the trustor is a beneficiary of a trust  
14 created by the trustor and the trustor's interest is subject  
15 to a provision restraining the voluntary or involuntary  
16 transfer of the trustor's interest, the restraint is invalid  
17 against transferees or creditors of the trustor. The  
18 invalidity of the restraint on transfer does not affect the  
19 validity of the trust.

20 (2) If the trustor is the beneficiary of a trust  
21 created by the trustor and the trust instrument provides  
22 that the trustee shall pay income or principal or both for  
23 the education or support of the beneficiary or gives the  
24 trustee the discretion to determine the amount of income or  
25 principal or both to be paid to or for the benefit of the



1 trustor, a transferee or creditor of the trustor may reach  
2 the maximum amount that the trustee could pay to or for the  
3 benefit of the trustor under the trust instrument, not  
4 exceeding the amount of the trustor's proportionate  
5 contribution to the trust.

6 NEW SECTION. Section 29. Disclaimer not a transfer.  
7 A disclaimer or renunciation by a beneficiary of all or part  
8 of his interest under a trust shall not be considered a  
9 transfer under [section 24 or 25].

10 NEW SECTION. Section 30. Presumption of revocability.  
11 Unless a trust is expressly made irrevocable by the trust  
12 instrument, the trust is revocable by the trustor. This  
13 section applies only where the trustor is domiciled in this  
14 state when the trust is created, where the trust instrument  
15 is executed in this state, or where the trust instrument  
16 provides that the law of this state governs the trust.

17 NEW SECTION. Section 31. Method of revocation by  
18 trustor. (1) A trust that is revocable by the trustor may be  
19 revoked in whole or in part by any of the following methods:  
20 (a) by compliance with any method of revocation  
21 provided in the trust instrument; or  
22 (b) by a writing (other than a will) signed by the  
23 trustor and delivered to the trustee during the lifetime of  
24 the trustor. If the trust instrument explicitly makes the  
25 method of revocation provided in the trust instrument the

1 exclusive method of revocation, the trust may not be revoked  
2 pursuant to this subsection.

3 (2) A trust may not be revoked by an attorney-in-fact  
4 under a power of attorney unless it is expressly permitted  
5 by the trust instrument.

6 (3) Nothing in this section limits the authority to  
7 modify or terminate a trust pursuant to [section 33 or 34]  
8 in an appropriate case.

9 (4) The manner of revocation of a trust revocable by  
10 the trustor that was created by an instrument executed  
11 before October 1, 1989, is governed by prior law and not by  
12 this section.

13 NEW SECTION. Section 32. Power to revoke includes  
14 power to modify. Unless the trust instrument provides  
15 otherwise, if a trust is revocable by the trustor, the  
16 trustor may modify the trust by the procedure for  
17 revocation.

18 NEW SECTION. Section 33. Modification or termination  
19 of irrevocable trust by all beneficiaries. (1) Except as  
20 provided in subsection (2), if all beneficiaries of an  
21 irrevocable trust consent, they may compel modification or  
22 termination of the trust upon petition to the court.

23 (2) If the continuance of the trust is necessary to  
24 carry out a material purpose of the trust, the trust cannot  
25 be modified or terminated unless the court, in its

1 discretion, determines that the reason for doing so under  
2 the circumstances outweighs the interest in accomplishing a  
3 material purpose of the trust. Under this section the court  
4 does not have discretion to permit termination of a trust  
5 that is subject to a valid restraint on transfer of the  
6 beneficiary's interest as provided in [sections 24 through  
7 29].

8 NEW SECTION. Section 34. Modification or termination  
9 by trustor and all beneficiaries. (1) If the trustor and all  
10 beneficiaries of a trust consent, they may compel the  
11 modification or termination of the trust.

12 (2) If any beneficiary does not consent to the  
13 modification or termination of the trust, upon petition to  
14 the court, the other beneficiaries, with the consent of the  
15 trustor, may compel a modification or a partial termination  
16 of the trust if the interests of the beneficiaries who do  
17 not consent are not substantially impaired.

18 (3) If the trust provides for the disposition of  
19 principal to a class of persons described only as "heirs" or  
20 "next of kin" of the trustor, or using other words that  
21 describe the class of all persons who would take under the  
22 rules of intestacy, the court may limit the class of  
23 beneficiaries whose consent is needed to compel the  
24 modification or termination of the trust to the  
25 beneficiaries who are reasonably likely to take under the

1 circumstances.

2 NEW SECTION. Section 35. Guardian ad litem. For the  
3 purposes of [sections 33 and 34], the consent of a  
4 beneficiary who is legally incapacitated, unascertained, or  
5 unborn may be given in proceedings before the court by a  
6 guardian ad litem, if it would be appropriate to do so. In  
7 this case the guardian ad litem may rely on general family  
8 benefit accruing to living members of the beneficiary's  
9 family as a basis for approving a modification or  
10 termination of the trust.

11 NEW SECTION. Section 36. No conclusive presumption of  
12 fertility. In determining the class of beneficiaries whose  
13 consent is necessary to modify or terminate a trust pursuant  
14 to [section 33 or 34], the presumption of fertility is  
15 rebuttable.

16 NEW SECTION. Section 37. Termination of trusts --  
17 trustee's powers on termination. (1) A trust terminates when  
18 any of the following occurs:

- 19 (a) the term of the trust expires;  
20 (b) the trust purpose is fulfilled;  
21 (c) the trust purpose becomes unlawful;  
22 (d) the trust purpose becomes impossible to fulfill;  
23 or  
24 (e) the trust is revoked.  
25 (2) On termination of the trust, the trustee continues

1 to have the powers reasonably necessary under the  
2 circumstances to wind up the affairs of the trust.

3 NEW SECTION. Section 38. Trust with uneconomically  
4 low principal. (1) On petition by a trustee or beneficiary,  
5 if the court determines that the fair market value of the  
6 principal of a trust has become so low in relation to the  
7 cost of administration that continuation of the trust under  
8 its existing terms will defeat or substantially impair the  
9 accomplishment of its purposes, the court may, in its  
10 discretion and in a manner that conforms as nearly as  
11 possible to the intention of the trustor, order any of the  
12 following:

- 13 (a) termination of the trust;
- 14 (b) modification of the trust; or
- 15 (c) appointment of a new trustee.

16 (2) Notwithstanding subsection (1), if the trust  
17 principal does not exceed \$20,000 in value, the trustee has  
18 the power to terminate the trust.

19 (3) The existence of a trust provision restraining  
20 transfer of the beneficiary's interest does not prevent  
21 application of this section.

22 NEW SECTION. Section 39. Modification or termination.  
23 (1) On petition by a trustee or beneficiary, the court may  
24 modify the administrative or dispositive provisions of the  
25 trust or terminate the trust if the continuation of the

1 trust under its terms would defeat or substantially impair  
2 the accomplishment of the purposes of the trust, whether by  
3 the imposition of tax, the allocation of beneficial interest  
4 inconsistent with such purposes, or by other reason. In this  
5 case, if necessary to carry out the purposes of the trust,  
6 the court may order the trustee to do acts that are not  
7 authorized or are forbidden by the trust instrument.

8 (2) The court shall consider a trust provision  
9 restraining transfer of the beneficiary's interest as a  
10 factor in making its decision whether to modify or terminate  
11 the trust, but the court is not precluded from exercising  
12 its discretion to modify or terminate the trust solely  
13 because of a restraint on transfer.

14 NEW SECTION. Section 40. Disposition of property upon  
15 termination. At the termination of a trust, the trust  
16 property shall be disposed of as follows:

17 (1) In the case of a trust that is revoked by the  
18 trustor, as directed by the trustor.

19 (2) In the case of a trust that is terminated by the  
20 consent of the trustor and all beneficiaries, as agreed by  
21 the trustor and all beneficiaries.

22 (3) In any other case, as provided in the trust  
23 instrument or in a manner directed by the court that  
24 conforms as nearly as possible to the intention of the  
25 trustor as expressed in the trust instrument. If a trust is

1 terminated by the trustee pursuant to [section 38(2)], the  
2 trust property shall be distributed as determined by the  
3 trustee pursuant to this subsection.

4 NEW SECTION. Section 41. Combination of similar  
5 trusts. If the terms of two or more trusts are substantially  
6 similar, on petition by a trustee or beneficiary, the court,  
7 for good cause shown, may combine the trusts if the court  
8 determines that administration as a single trust will not  
9 defeat or substantially impair the accomplishment of the  
10 trust purposes or the interests of the beneficiaries.

11 NEW SECTION. Section 42. Division of trusts. On  
12 petition by a trustee or beneficiary, the court, for good  
13 cause shown, may divide a trust into two or more separate  
14 trusts, if the court determines that dividing the trust will  
15 not defeat or substantially impair the accomplishment of the  
16 trust purposes or the interests of the beneficiaries.

17 NEW SECTION. Section 43. Charitable trust. A  
18 charitable trust, or the charitable portion of a trust,  
19 subjects the trustee to equitable duties to deal with the  
20 trust property for a charitable purpose.

21 NEW SECTION. Section 44. Charitable purposes.  
22 Charitable purposes include:

- 23 (1) the relief of poverty;
- 24 (2) the advancement of education;
- 25 (3) the advancement of religion;

- 1 (4) the promotion of health;
- 2 (5) governmental or municipal purposes; or
- 3 (6) other purposes the accomplishment of which are
- 4 beneficial to the community.

5 NEW SECTION. Section 45. Enforcement of a charitable  
6 trust. The attorney general, a cotrustee, or a person who  
7 has a special interest in the enforcement of the charitable  
8 trust can maintain a suit for the enforcement of a  
9 charitable trust, but not persons who have no special  
10 interest or the trustor or his heirs or personal  
11 representative.

12 NEW SECTION. Section 46. Cy pres doctrine. If  
13 property is given in trust to be applied to a particular  
14 charitable purpose, and it is or becomes impossible,  
15 impracticable, or illegal to carry out the particular  
16 purpose, and if the trustor manifested a general intention  
17 to devote the property to charitable purposes, the trust  
18 need not fail. The court may direct the application of the  
19 property to some charitable purpose which falls within the  
20 general charitable intention of the trustor.

21 NEW SECTION. Section 47. Acceptance of trust by  
22 trustee. (1) The person named as trustee may accept the  
23 trust, or a modification of the trust, by one of the  
24 following methods:

- 25 (a) signing the trust instrument or the trust

1 instrument as modified, or signing a separate written  
2 acceptance; or

3 (b) knowingly exercising powers or performing duties  
4 under the trust instrument or the trust instrument as  
5 modified, except as provided in subsection (2).

6 (2) In a case where there is an immediate risk of  
7 damage to the trust property, the person named as trustee  
8 may act to preserve the trust property without accepting the  
9 trust or a modification of the trust, if within reasonable  
10 time after acting the person delivers a written rejection of  
11 the trust or the modification of the trust to the trustor  
12 or, if the trustor is dead or incompetent, to a beneficiary.  
13 This subsection does not impose a duty on the person named  
14 as trustee to act.

15 NEW SECTION. Section 48. Rejection of trust --  
16 nonliability of person who rejects trust. (1) A person named  
17 as trustee may in writing reject the trust or a modification  
18 of the trust.

19 (2) If the person named as trustee does not accept the  
20 trust or a modification of the trust by a method provided in  
21 [section 47(1)] within a reasonable time after learning of  
22 being named as trustee or of the modification, the person  
23 has rejected the trust or the modification.

24 (3) A person named as trustee who rejects the trust or  
25 a modification of the trust is not liable with respect to

1 the rejected trust or modification.

2 NEW SECTION. Section 49. Trustee's bond. (1) A  
3 trustee is not required to give a bond to secure performance  
4 of the trustee's duties, unless either of the following  
5 circumstances occur OCCURS:

6 (a) A bond is required by the trust instrument.

7 (b) Notwithstanding a waiver of bond in the trust  
8 instrument, a bond is found by the court to be necessary to  
9 protect the interests of beneficiaries.

10 (2) Notwithstanding subsection (1)(a), the court may  
11 excuse a requirement of a bond, reduce or increase the  
12 amount of a bond, release a surety, permit the substitution  
13 of another bond with the same or different sureties, or  
14 accept another form of security.

15 (3) If a bond is required, it shall be filed or  
16 served, in the amount, and with sureties and liabilities as  
17 provided in the trust instrument or as ordered by the court.

18 (4) Except as otherwise provided in the trust  
19 instrument or ordered by the court, the cost of the bond  
20 shall be charged against the trust.

21 (5) A trust company may not be required to give a  
22 bond, notwithstanding a contrary provision in the trust  
23 instrument.

24 NEW SECTION. Section 50. Certificate of trustee. On  
25 application by the trustee, the clerk of the district court

1 shall issue a certificate that the trustee is a duly  
2 appointed and acting trustee under the trust if the court  
3 file shows the incumbency of the trustee.

4 NEW SECTION. Section 51. Cotrustees. (1) Unless  
5 otherwise provided in the trust instrument, a power vested  
6 in two trustees may only be exercised by their unanimous  
7 action.

8 (2) Unless otherwise provided in the trust instrument,  
9 a power vested in three or more trustees may be exercised by  
10 a majority of such trustees.

11 NEW SECTION. Section 52. Vacancy in office of  
12 cotrustee. Unless otherwise provided in the trust  
13 instrument, if a vacancy occurs in the office of a  
14 cotrustee, the remaining cotrustee or cotrustees may act for  
15 the trust as if they are the only trustees.

16 NEW SECTION. Section 53. Temporary incapacity of  
17 cotrustee. Unless otherwise provided in the trust  
18 instrument, if a cotrustee is unavailable to perform the  
19 duties of the cotrustee because of absence, illness, or  
20 other temporary incapacity, the remaining cotrustee or  
21 cotrustees may act for the trust when necessary to  
22 accomplish the purposes of the trust or to avoid irreparable  
23 injury to the trust property as if they are the only  
24 trustees.

25 NEW SECTION. Section 54. Resignation of the trustee.

1 (1) A trustee who has accepted the trust may resign only by  
2 one of the following methods:

3 (a) as provided in the trust instrument;

4 (b) in the case of a revocable trust, with the consent  
5 of the person holding the power to revoke the trust;

6 (c) in the case of a trust that is not revocable, with  
7 the consent of only all of the adult beneficiaries who are  
8 receiving or are entitled to receive income under the trust  
9 or to receive a distribution of principal if the trust were  
10 terminated at the time consent is sought; or

11 (d) pursuant to a court order obtained as provided in  
12 subsection (2).

13 (2) On petition by the trustee, the court shall accept  
14 the trustee's resignation. The court may also make any  
15 orders necessary for the preservation of the trust property,  
16 including the appointment of a receiver or a temporary  
17 trustee.

18 NEW SECTION. Section 55. Liability upon resignation.  
19 The liability for acts or omissions of a resigning trustee  
20 or of the sureties on the trustee's bond, if any, is not  
21 released or affected in any manner by the trustee's  
22 resignation.

23 NEW SECTION. Section 56. Removal of a trustee. (1) A  
24 trustee may be removed in accordance with the trust  
25 instrument or by the court on its own motion or on petition

1 of a cotrustee or beneficiary.

2 (2) The grounds for removal of a trustee by the court  
3 include the following:

4 (a) if the trustee has committed a breach of the  
5 trust;

6 (b) if the trustee is insolvent or otherwise unfit to  
7 administer the trust;

8 (c) if hostility or lack of cooperation among  
9 cotrustees impairs the administration of the trust;

10 (d) if the trustee fails or declines to act; or

11 (e) for other good cause.

12 (3) If it appears to the court that trust property or  
13 the interests of a beneficiary may suffer loss or injury  
14 pending a decision on a petition for removal of a trustee  
15 and any appellate review, the court may, on its own motion  
16 or on petition of a cotrustee or beneficiary, compel the  
17 trustee whose removal is sought to surrender trust property  
18 to a cotrustee or to a receiver or temporary trustee. The  
19 court may also suspend the powers of the trustee to the  
20 extent the court considers necessary.

21 NEW SECTION. Section 57. Vacancy in office of  
22 trustee. There is a vacancy in the office of trustee in any  
23 of the following circumstances:

24 (1) The person named as trustee rejects the trust.

25 (2) The person named as trustee cannot be identified

1 or does not exist.

2 (3) The trustee resigns or is removed.

3 (4) The trustee dies.

4 (5) A conservator or guardian of an individual trustee  
5 is appointed.

6 (6) A certificate of incorporation of a trust company  
7 is revoked or its powers are suspended, if the revocation or  
8 suspension is to be in effect for a period of 30 days or  
9 more.

10 (7) A receiver is appointed for a trust company if the  
11 appointment is not vacated within a period of 30 days.

12 NEW SECTION. Section 58. Delivery of property by  
13 former trustee upon occurrence of vacancy. When a vacancy  
14 has occurred in the office of trustee, the former trustee  
15 who holds property of the trust shall deliver the trust  
16 property to the successor trustee or a person appointed by  
17 the court to receive the property and remains responsible  
18 for the trust property until it is delivered. A trustee who  
19 has resigned or is removed has the powers reasonably  
20 necessary under the circumstances to preserve the trust  
21 property until it is delivered to the successor trustee and  
22 to perform actions necessary to complete the resigning or  
23 removed trustee's administration of the trust.

24 NEW SECTION. Section 59. Appointment of trustee to  
25 fill vacancy. (1) If the trust has no trustee or if the

1 trust instrument requires a vacancy in the office of a  
2 cotrustee to be filled, the vacancy shall be filled as  
3 provided in this section.

4 (2) If the trust instrument provides a practical  
5 method of appointing a trustee or names the person to fill  
6 the vacancy, the vacancy shall be filled as provided in the  
7 trust instrument.

8 (3) If the vacancy in the office of trustee is not  
9 filled as provided in subsection (2), on petition of a  
10 cotrustee or beneficiary the court may, in its discretion,  
11 appoint a trustee to fill the vacancy. If the trust provides  
12 for more than one trustee, the court may, in its discretion,  
13 appoint the original number or any lesser number of  
14 trustees. In selecting a trustee, the court shall give  
15 consideration to the wishes of the beneficiaries who are 14  
16 years of age or older.

17 NEW SECTION. Section 60. Capacity of trustee. (1) The  
18 trustee must have the legal capacity to take, hold, and  
19 transfer the trust property. The trustee may be a natural  
20 person or a corporation or trust company. If the trustee is  
21 a corporation, it must be qualified to act as a trustee in  
22 this state.

23 (2) A beneficiary of a trust may be the trustee of the  
24 trust.

25 (3) The trustor of a trust may be the trustee of the

1 trust.

2 NEW SECTION. Section 61. Trustee's compensation as  
3 provided in trust instrument -- different compensation. (1)  
4 Subject to subsection (2), if the trust instrument provides  
5 for the trustee's compensation, the trustee is entitled to  
6 be compensated in accordance with the trust instrument.

7 (2) Upon proper showing, the court may fix or allow  
8 greater or lesser compensation than could be allowed under  
9 the terms of the trust in any of the following  
10 circumstances:

11 (a) whenever the duties of the trustee are  
12 substantially different from those contemplated when the  
13 trust was created;

14 (b) whenever the compensation in accordance with the  
15 terms of the trust would be inequitable or unreasonably low  
16 or high; or

17 (c) in extraordinary circumstances calling for  
18 equitable relief.

19 (3) An order fixing or allowing greater or lesser  
20 compensation under subsection (2) applies only prospectively  
21 to actions taken in administration of the trust after the  
22 order is made.

23 NEW SECTION. Section 62. Trustee's compensation where  
24 trust silent. If the trust instrument does not specify the  
25 trustee's compensation, the trustee is entitled to



1 reasonable compensation.

2 NEW SECTION. Section 63. Compensation for services  
3 rendered in making temporary investments. In addition to  
4 other compensation to which the trustee is entitled, the  
5 trustee is entitled to make a reasonable charge for services  
6 rendered in making temporary investments.

7 NEW SECTION. Section 64. Court determination of  
8 prospective compensation. The court may fix an amount of  
9 periodic compensation under [sections 61 and 62] to continue  
10 for as long as the court determines is proper.

11 NEW SECTION. Section 65. Compensation of cotrustees.  
12 Unless the trust instrument otherwise provides or the  
13 trustees otherwise agree, if the trust has two or more  
14 trustees, the compensation shall be apportioned among the  
15 cotrustees according to the services rendered by them.

16 NEW SECTION. Section 66. Repayment of trustee for  
17 expenditures. A trustee is entitled to the repayment out of  
18 the trust property for the following:

19 (1) expenditures that were properly incurred in the  
20 administration of the trust; and

21 (2) to the extent that they benefited the trust,  
22 expenditures that were not properly incurred in the  
23 administration of the trust.

24 NEW SECTION. Section 67. Trustee's lien. The trustee  
25 has an equitable lien on the trust property as against the

1 beneficiary in the amount of advances, with any interest,  
2 made for the protection of the trust, and for expenses,  
3 losses, and liabilities sustained in the administration of  
4 the trust or because of ownership or control of any trust  
5 property.

6 NEW SECTION. Section 68. Limits on rights of  
7 beneficiary of revocable trust. Except to the extent that  
8 the trust instrument otherwise provides or where the joint  
9 action of the trustor and all beneficiaries is required,  
10 during the time that a trust is revocable and the person  
11 holding the power to revoke the trust is competent:

12 (1) The person holding the power to revoke, and not  
13 the beneficiary, has the rights afforded beneficiaries under  
14 [sections 1 through 215].

15 (2) The duties of the trustee are owed to the person  
16 holding the power to revoke.

17 NEW SECTION. Section 69. Consent by beneficiary of  
18 revocable trust. (1) In any case where the consent of a  
19 beneficiary may be given or is required to be given before  
20 an action may be taken, during the time that a trust is  
21 revocable and the person holding the power to revoke the  
22 trust is competent, the person holding the power to revoke,  
23 and not the beneficiary, has the power to consent or  
24 withhold consent.

25 (2) This section does not apply where the joint

1 consent of the trustor and all beneficiaries is required by  
2 statute.

3 NEW SECTION. Section 70. Notice to beneficiary of  
4 revocable trust. Notwithstanding any other statute, during  
5 the time that a trust is revocable and the person holding  
6 the power to revoke the trust is competent, a notice that is  
7 to be given to a beneficiary shall be given to the person  
8 holding the power to revoke and not to the beneficiary.

9 NEW SECTION. Section 71. Rights of holder of power of  
10 appointment or withdrawal. The holder of a presently  
11 exercisable general power of appointment or power to  
12 withdraw property from the trust has the rights of a trustor  
13 provided by [sections 68 through 70], inclusive, to the  
14 extent of the holder's power over the trust property.

15 NEW SECTION. Section 72. Notice in case involving  
16 future interest of beneficiary. (1) Subject to subsections  
17 (2) and (3), it is sufficient compliance with a requirement  
18 in [sections 1 through 215] that notice be given to a  
19 beneficiary, or to a person interested in the trust, if  
20 notice is given as follows:

21 (a) Whenever an interest has been limited on any  
22 future contingency to persons who will compose a certain  
23 class upon the happening of a certain event without further  
24 limitation, notice shall be given to the persons in being  
25 who would constitute the class if the event had happened

1 immediately before the commencement of the proceedings.

2 (b) Whenever an interest has been limited to a living  
3 person and the same interest, or a share therein, has been  
4 further limited upon the happening of a future event to the  
5 surviving spouse or to persons who are or may be the  
6 distributees, heirs, issue, or other kindred of the living  
7 persons, notice shall be given to the living person.

8 (c) Whenever an interest has been limited upon the  
9 happening of any future event to a person, or a class of  
10 persons, or both, and the interest, or a share of the  
11 interest, has been further limited upon the happening of an  
12 additional future event to another person, or a class of  
13 persons, or both, notice shall be given to the person or  
14 persons in being who would take the interest upon the  
15 happening of the first of these events.

16 (2) If a conflict of interest involving the subject  
17 matter of the trust proceeding exists between a person to  
18 whom notice is required to be given and a person to whom  
19 notice is not otherwise required to be given under  
20 subsection (1), notice shall also be given to persons not  
21 otherwise entitled to notice under subsection (1) with  
22 respect to whom the conflict of interest exists.

23 (3) Nothing in this section affects any of the  
24 following:

25 (a) requirements for notice to:

- 1 (i) a person who has requested special notice;
- 2 (ii) a person who has filed notice of appearance; or
- 3 (iii) a particular person or entity required by statute
- 4 to be given notice.

5 (b) Availability of a guardian ad litem pursuant to  
6 [section 187].

7 **NEW SECTION. Section 73. Duty to administer trust.** On  
8 acceptance of the trust, the trustee has a duty to  
9 administer the trust according to the trust instrument and,  
10 except to the extent the trust instrument provides  
11 otherwise, according to [sections 1 through 215].

12 **NEW SECTION. Section 74. Duties of trustee of**  
13 **revocable trust.** (1) Except as provided in subsection (2),  
14 the trustee of a revocable trust shall follow any written  
15 direction acceptable to the trustee given from time to time:

16 (a) by the person then having the power to revoke the  
17 trust or the part thereof with respect to which the  
18 direction is given; or

19 (b) by the person to whom the trustor delegates the  
20 right to direct the trustee.

21 (2) If a written direction given under subsection (1)  
22 would have the effect of modifying the trust, the trustee  
23 has no duty to follow the direction unless it complies with  
24 the requirements for modifying the trust.

25 **NEW SECTION. Section 75. Duty of loyalty.** (1) The

1 trustee has a duty to administer the trust solely in the  
2 interest of the beneficiaries.

3 (2) It is not a violation of the duty provided in  
4 subsection (1) for a trustee who administers two trusts to  
5 sell, exchange, or participate in the sale or exchange of  
6 trust property between the trusts, if both of the following  
7 requirements are met:

8 (a) the sale or exchange is fair and reasonable with  
9 respect to the beneficiaries of both trusts; and

10 (b) the trustee gives to the beneficiaries of both  
11 trusts notice of all material facts related to the sale or  
12 exchange that the trustee knows or should know.

13 **NEW SECTION. Section 76. Duty to deal impartially**  
14 **with beneficiaries.** If a trust has two or more  
15 beneficiaries, the trustee has a duty to deal impartially  
16 with them.

17 **NEW SECTION. Section 77. Duty to avoid conflict of**  
18 **interest.** (1) The trustee has a duty not to use or deal with  
19 trust property for the trustee's own profit or for any other  
20 purpose unconnected with the trust, nor to take part in any  
21 transaction in which the trustee has an interest adverse to  
22 the beneficiary.

23 (2) The trustee may not enforce any claim against the  
24 trust property that the trustee purchased after or in  
25 contemplation of appointment as trustee, but the court may

1 allow the trustee to be reimbursed from trust property the  
2 amount that the trustee paid for the claim.

3 (3) A transaction between the trustee and a  
4 beneficiary which occurs during the existence of the trust  
5 or while the trustee's influence with the beneficiary  
6 remains and by which the trustee obtains an advantage from  
7 the beneficiary is presumed to be a violation of the  
8 trustee's fiduciary duties. This presumption is a  
9 presumption affecting the burden of proof. This subsection  
10 does not apply to the provisions of an agreement between a  
11 trustee and a beneficiary relating to the hiring or  
12 compensation of the trustee.

13 NEW SECTION. Section 78. Duty not to undertake  
14 adverse trust. The trustee of one trust has a duty not to  
15 knowingly become a trustee of another trust adverse in its  
16 nature to the interest of the beneficiary of the first  
17 trust, and a duty to eliminate the conflict or resign as  
18 trustee when the conflict is discovered.

19 NEW SECTION. Section 79. Duty to take control of and  
20 preserve trust property. The trustee has a duty to take  
21 reasonable steps under the circumstances to take and keep  
22 control of and to preserve the trust property.

23 NEW SECTION. Section 80. Duty to make trust property  
24 productive. The trustee has a duty to make the trust  
25 property productive under the circumstances and in

1 furtherance of the purposes of the trust.

2 NEW SECTION. Section 81. Duty to dispose of improper  
3 investments. (1) Except as provided in subsection (2), the  
4 trustee has a duty within a reasonable time to dispose of  
5 any part of the trust property included in the trust at the  
6 time of its creation, or later acquired by or added to the  
7 trust, that would not be a proper investment for the trustee  
8 to make.

9 (2) Unless the trust instrument expressly provides  
10 otherwise, the trustee may, without liability, continue to  
11 hold property included in the trust at its creation or later  
12 added to the trust or acquired pursuant to proper authority,  
13 if retention is in the best interests of the trust or in  
14 furtherance of the purposes of the trust.

15 NEW SECTION. Section 82. Duty to keep trust property  
16 separate and identified. The trustee has a duty to do the  
17 following:

18 (1) to keep the trust property separate from other  
19 property not subject to the trust; and

20 (2) to see that the trust property is designated as  
21 property of the trust.

22 NEW SECTION. Section 83. Duty to enforce claims. The  
23 trustee has a duty to take reasonable steps to enforce  
24 claims that are part of the trust property.

25 NEW SECTION. Section 84. Duty to defend actions. The

1 trustee has a duty to take reasonable steps to defend  
2 actions that may result in a loss to the trust.

3 NEW SECTION. Section 85. Duty not to delegate. (1)  
4 The trustee has a duty not to delegate to others the  
5 performance of acts that the trustee can reasonably be  
6 required personally to perform and may not transfer the  
7 office of trustee to another person nor delegate the entire  
8 administration of the trust to a cotrustee or other person.

9 (2) In a case where a trustee has properly delegated a  
10 matter to an agent, cotrustee, or other person, the trustee  
11 has a duty to exercise general supervision over the person  
12 performing the delegated matter.

13 NEW SECTION. Section 86. Duty with respect to  
14 cotrustees. If a trust has more than one trustee, each  
15 trustee has a duty to do the following:

16 (1) to participate in the administration of the trust;  
17 and

18 (2) to take reasonable steps to prevent a cotrustee  
19 from committing a breach of trust or to compel a cotrustee  
20 to redress a breach of trust.

21 NEW SECTION. Section 87. Duty to use special skills.  
22 (1) The trustee has a duty to apply the full extent of the  
23 trustee's skills.

24 (2) If the trustor, in selecting the trustee, has  
25 relied on the trustee's representation of having special

1 skills, the trustee is held to the standard of the skills  
2 represented.

3 NEW SECTION. Section 88. Certain actions not  
4 violations of duties. The provision of services for  
5 compensation by a regulated financial institution or its  
6 affiliates in the ordinary course of business either to a  
7 trust of which it also acts as trustee or to a person  
8 dealing with the trust is not a violation of the duty  
9 provided in [section 75 or 77]. For the purposes of this  
10 section, "affiliate" means a corporation that directly or  
11 indirectly through one or more intermediaries controls, is  
12 controlled by, or is under common control with another  
13 domestic or foreign corporation.

14 NEW SECTION. Section 89. Duty to use ordinary skill  
15 and prudence. (1) The trustee shall administer the trust  
16 with the care, skill, prudence, and diligence under the  
17 circumstances then prevailing that a prudent person would  
18 use to accomplish the purposes of the trust as determined  
19 from the trust instrument.

20 (2) When investing, reinvesting, purchasing,  
21 acquiring, exchanging, selling, and managing trust property,  
22 the trustee shall act with the care, skill, prudence, and  
23 diligence under the circumstances then prevailing, including  
24 but not limited to the general economic conditions and the  
25 anticipated needs of the trust and its beneficiaries, that a

1 prudent person would use to accomplish the purposes of the  
2 trust as determined from the trust instrument. In the course  
3 of administering the trust pursuant to this standard,  
4 individual investments shall be considered as part of an  
5 overall investment strategy.

6 (3) The trustor may expand or restrict the standards  
7 provided in subsections (1) and (2) by express provisions in  
8 the trust instrument. A trustee is not liable to a  
9 beneficiary for the trustee's reliance on these express  
10 provisions.

11 NEW SECTION. Section 90. Standard of care not  
12 affected by compensation. A trustee's standard of care and  
13 performance in administering the trust is not affected by  
14 whether or not the trustee receives any compensation.

15 NEW SECTION. Section 91. Interpretation of trust  
16 terms concerning legal investments. If a trust created  
17 before, on, or after October 1, 1989, refers to "investments  
18 permissible by law for investment of trust funds",  
19 "authorized by law for investment of trust funds", "legal  
20 investments", "authorized investments", or "investments  
21 acquired using the judgment and care which men of prudence,  
22 discretion, and intelligence exercise in the management of  
23 their own affairs, not in regard to speculation, but in  
24 regard to the permanent disposition of their funds,  
25 considering the probable income, as well as the probable

1 safety of their capital", or uses other words of similar  
2 meaning in defining the powers of the trustee relative to  
3 investments, such language, in the absence of other  
4 controlling or modifying provisions of the trust instrument,  
5 shall be construed as imposing the standard of care provided  
6 by [section 89] and authorizing any investment permitted  
7 under [sections 105 through 137].

8 NEW SECTION. Section 92. Trustee's general duty to  
9 report information to beneficiaries. The trustee has a duty  
10 to keep the beneficiaries of the trust reasonably informed  
11 of the trust and its administration.

12 NEW SECTION. Section 93. Duty to report information  
13 about trust on request. Except as provided in [section 95],  
14 on reasonable request by a beneficiary, the trustee shall  
15 provide the beneficiary with a report of information about  
16 the assets, liabilities, receipts, and disbursements of the  
17 trust, the acts of the trustee, and the particulars relating  
18 to the administration of the trust relevant to the  
19 beneficiary's interest, including the terms of the trust  
20 that describe or affect the beneficiary's interest.

21 NEW SECTION. Section 94. Duty to provide annual  
22 statement to income beneficiaries. Except as provided in  
23 [section 95], the trustee shall annually mail each income  
24 beneficiary an itemized statement of all current receipts  
25 and disbursements of both principal and income.

**NEW SECTION. Section 95. Exceptions to duty to report**

information and to provide annual statement. The trustee is not required to report information or to provide an annual statement to a beneficiary in any of the following circumstances:

(1) to the extent the trust instrument waives the report or annual statement;

(2) in the case of a beneficiary of a revocable trust, as provided in [section 68].

(3) as to a beneficiary who has waived in writing the right to a report or annual statement. A waiver of rights under this subsection may be withdrawn in writing at any time as to the most recent annual statement or future annual statements. A waiver has no effect of the beneficiary's right to petition for a report, statement, or account pursuant to [section 179]; or

(4) if the beneficiary and the trustee are the same person.

**NEW SECTION. Section 96. Permissive accounts. At any**

time during the term of the trust or upon the termination of the trust, the trustee may mail an account to trust beneficiaries. To effectively bar a beneficiary from an action against the trustee pursuant to [section 159], the account must contain the following information:

(1) a statement of receipts and disbursements of

principal and income that have occurred since the last account;

(2) a statement of the assets and liabilities of the trust since the last account;

(3) the trustee's compensation since the last account;

(4) the agents hired by the trustee, their relationship to the trustee, if any, and their compensation since the last account;

(5) a statement that the recipient of the account may petition the court pursuant to [section 179] to obtain a court review of the account and of the acts of the trustee; and

(6) a statement that claims against the trustee for breach of trust may not be made after the expiration of 3 years from the date the beneficiary receives an account disclosing facts giving rise to the claim.

**NEW SECTION. Section 97. Discretionary powers to be exercised reasonably.** Except as provided in [section 98], a discretionary power conferred upon a trustee is not left to the trustee's arbitrary discretion, but shall be exercised reasonably.

**NEW SECTION. Section 98. Standard for exercise of "absolute", "sole", or "uncontrolled" powers.** (1) Subject to the additional requirements of subsection (2), if a trust instrument confers "absolute", "sole", or "uncontrolled"

1 discretion on a trustee, the trustee shall act in accordance  
2 with fiduciary principles and may not act in disregard of  
3 the purposes of the trust.

4 (2) Notwithstanding the trustor's use of terms like  
5 "absolute", "sole", or "uncontrolled", a person who is a  
6 beneficiary of a trust and who, either individually or as  
7 trustee or cotrustee, holds a power to take or distribute  
8 income or principal to or for the benefit of himself or  
9 herself pursuant to a standard, shall exercise that power  
10 reasonably and in accordance with the standard. In any case  
11 in which the standard governing the exercise of the power  
12 does not clearly indicate that a broader power is intended,  
13 the holder of the power may exercise it in his or her favor  
14 only for his or her health, education, support, or  
15 maintenance.

16 NEW SECTION. Section 99. Definitions. As used in  
17 [sections 99 through 104], the following definitions apply:

18 (1) "Charitable trust" means a charitable trust as  
19 described in section 4947(a)(1) of the Internal Revenue  
20 Code.

21 (2) "Private foundation" means a private foundation as  
22 defined in section 509 of the Internal Revenue Code.

23 (3) "Split-interest trust" means a split-interest  
24 trust as described in section 4947(a)(2) of the Internal  
25 Revenue Code.

1 NEW SECTION. Section 100. Distribution under  
2 charitable trust or private foundation. During any period  
3 when a trust is considered to be a charitable trust or a  
4 private foundation, the trustee shall distribute its income  
5 for each taxable year (and principal if necessary) at a time  
6 and in a manner that will not subject the property of the  
7 trust to tax under section 4942 of the Internal Revenue  
8 Code.

9 NEW SECTION. Section 101. Restrictions on trustees  
10 under charitable trust, private foundations, or  
11 split-interest trust. During any period when a trust is  
12 considered to be a charitable trust, a private foundation,  
13 or a split-interest trust, the trustee may not do any of the  
14 following:

15 (1) engage in any act of self-dealing as defined in  
16 section 4941(d) of the Internal Revenue Code;

17 (2) retain any excess business holdings as defined in  
18 section 4943(c) of the Internal Revenue Code;

19 (3) make any investments in such manner as to subject  
20 the property of the trust to tax under section 4944 of the  
21 Internal Revenue Code; or

22 (4) make any taxable expenditure as defined in section  
23 4945(d) of the Internal Revenue Code.

24 NEW SECTION. Section 102. Exceptions applicable to  
25 split-interest trusts. With respect to split-interest



1 trusts:

2 (1) [Subsections (2) and (3) of section 101] do not  
3 apply to any trust described in section 4947(b)(3) of the  
4 Internal Revenue Code.

5 (2) [Section 101] does not apply with respect to any  
6 of the following:

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

11 (b) any amounts in trust other than amounts for which  
12 a deduction was allowed under section 170, 545(b)(2),  
13 556(b)(2), 642(c), 2055, 2106(a)(2), or 2522 of the Internal  
14 Revenue Code, if the amounts are segregated, as that term is  
15 defined in section 4947(a)(3) of the Internal Revenue Code,  
16 from amounts for which no deduction was allowable; or

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

19 NEW SECTION. Section 103. Incorporation in trust  
20 instruments. The provisions of [sections 100 through 102]  
21 shall be considered to be contained in the instrument  
22 creating every trust to which [sections 99 through 104]  
23 apply. Any provision of the instrument inconsistent with or  
24 contrary to [sections 99 through 104] is without effect.

25 NEW SECTION. Section 104. Proceedings. (1) A

1 proceeding contemplated by section 101(1)(3) of the federal  
2 Tax Reform Act of 1969 (Public Law 91-172) may be commenced  
3 pursuant to [section 179] by the organization involved. All  
4 specifically named beneficiaries of the organization and the  
5 attorney general shall be parties to the proceedings.  
6 Notwithstanding [section 165], this provision is not  
7 exclusive and does not limit any jurisdiction that otherwise  
8 exists.

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

15 NEW SECTION. Section 105. General powers of trustee.  
16 A trustee has the following powers without the need to  
17 obtain court authorization:

18 (1) the powers conferred by the trust instrument;

19 (2) except as limited in the trust instrument, the  
20 powers conferred by statute; and

21 (3) except as limited in the trust instrument, the  
22 power to perform any act that a trustee would perform for  
23 the purposes of the trust under the standard of care  
24 provided in [section 89].

25 NEW SECTION. Section 106. Power of court to relieve

1 trustee from restrictions on powers. [Sections 109 through  
2 137] do not affect the power of a court to relieve a trustee  
3 from restrictions on the exercise of powers under the trust  
4 instrument.

5 NEW SECTION. Section 107. Exercise of powers subject  
6 to trustee's duties. The grant of a power to a trustee,  
7 whether by the trust instrument, by statute, or by the  
8 court, does not in itself require or permit the exercise of  
9 the power. The exercise of a power by a trustee is subject  
10 to the trustee's fiduciary duties.

11 NEW SECTION. Section 108. Application of rules  
12 governing trustees' powers. An instrument that incorporates  
13 the powers provided in former Title 72, chapter 21,  
14 ("Montana Trustees' Powers Act") shall be considered to  
15 refer to the powers provided [sections 109 through 137]. For  
16 this purpose, the trustee's powers under former Title 72,  
17 chapter 21, ("Montana Trustees' Powers Act") are not  
18 diminished and the trustee is not required to obtain court  
19 approval for exercise of a power for which court approval  
20 was not required by former law.

21 NEW SECTION. Section 109. Collecting and holding  
22 property. The trustee has the power to collect, hold, and  
23 retain trust property received from a trustor or any other  
24 person until, in the judgment of the trustee, disposition of  
25 the property should be made. The property may be retained

1 even though it includes property in which the trustee is  
2 personally interested.

3 NEW SECTION. Section 110. Receiving additions to  
4 trust. The trustee has the power to accept additions to the  
5 property of the trust from a trustor or any other person.

6 NEW SECTION. Section 111. Participation in business  
7 -- change in form of business. The trustee has the power to  
8 continue to participate in the operation of any business or  
9 other enterprise that is part of the trust property and may  
10 effect incorporation, dissolution, or other change in the  
11 form of the organization of the business or enterprise.

12 NEW SECTION. Section 112. Investments. The trustee  
13 has the power to invest in any kind of property, whether  
14 real, personal, or mixed.

15 NEW SECTION. Section 113. Investments in obligations  
16 of United States government. ~~In the absence of an express~~  
17 ~~provision to the contrary in a trust instrument, whenever~~  
18 ~~the instrument directs or permits investment in obligations~~  
19 ~~of the United States government, the trustee has the power~~  
20 ~~to invest in those obligations directly or in the form of an~~  
21 ~~interest in a money market mutual fund registered under the~~  
22 ~~Investment Company Act of 1940 (15 U.S.C. section 80a-1 et~~  
23 ~~seq.) or an investment vehicle authorized for the collective~~  
24 ~~investment of trust funds pursuant to section 9-18 of Title~~  
25 ~~12 of the Code of Federal Regulations, the portfolios of~~

1 ~~which are limited to United States government obligations~~  
 2 ~~and to repurchase agreements fully collateralized by United~~  
 3 ~~States government obligations IF THE PERSONAL REPRESENTATIVE~~  
 4 ~~IS AUTHORIZED TO INVEST FUNDS IN UNITED STATES OBLIGATIONS,~~  
 5 ~~HE MAY INVEST IN THESE OBLIGATIONS EITHER DIRECTLY OR IN THE~~  
 6 ~~FORM OF SECURITIES OR OTHER INTERESTS IN AN OPEN-END OR~~  
 7 ~~CLOSED-END MANAGEMENT TYPE INVESTMENT COMPANY OR INVESTMENT~~  
 8 ~~TRUST REGISTERED UNDER THE INVESTMENT COMPANY ACT OF 1940~~  
 9 ~~(15 U.S.C. 80A-1 THROUGH 80A-64), AS AMENDED, IF:~~

10 ~~(1) THE PORTFOLIO OF THE INVESTMENT COMPANY OR~~  
 11 ~~INVESTMENT TRUST IS LIMITED TO UNITED STATES GOVERNMENT~~  
 12 ~~OBLIGATIONS AND REPURCHASE AGREEMENTS FULLY COLLATERALIZED~~  
 13 ~~BY UNITED STATES GOVERNMENT OBLIGATIONS, AND~~

14 ~~(2) THE INVESTMENT COMPANY OR INVESTMENT TRUST TAKES~~  
 15 ~~DELIVERY OF THE COLLATERAL FOR ANY REPURCHASE AGREEMENT,~~  
 16 ~~EITHER DIRECTLY OR THROUGH AN AUTHORIZED CUSTODIAN IN THE~~  
 17 ~~ABSENCE OF AN EXPRESS PROVISION TO THE CONTRARY IN A TRUST~~  
 18 ~~INSTRUMENT, WHENEVER THE INSTRUMENT DIRECTS OR PERMITS~~  
 19 ~~INVESTMENT IN OBLIGATIONS OF THE UNITED STATES GOVERNMENT,~~  
 20 ~~THE TRUSTEE HAS THE POWER TO INVEST IN THOSE OBLIGATIONS~~  
 21 ~~DIRECTLY OR IN THE FORM OF SECURITIES OR OTHER INTERESTS IN~~  
 22 ~~AN OPEN-END OR CLOSED-END MANAGEMENT TYPE INVESTMENT COMPANY~~  
 23 ~~OR INVESTMENT TRUST REGISTERED UNDER THE INVESTMENT COMPANY~~  
 24 ~~ACT OF 1940 (15 U.S.C. 80A-1 THROUGH 80A-64), AS AMENDED,~~  
 25 ~~OR AN INVESTMENT VEHICLE AUTHORIZED FOR THE COLLECTIVE~~

1 INVESTMENT OF TRUST FUNDS PURSUANT TO SECTION 9.18 OF TITLE  
 2 12 OF THE CODE OF FEDERAL REGULATIONS, IF:

3 (1) THE PORTFOLIO OF THE INVESTMENT COMPANY,  
 4 INVESTMENT TRUST, OR INVESTMENT VEHICLE IS LIMITED TO UNITED  
 5 STATES GOVERNMENT OBLIGATIONS AND REPURCHASE AGREEMENTS  
 6 FULLY COLLATERALIZED BY UNITED STATES GOVERNMENT  
 7 OBLIGATIONS; AND

8 (2) THE INVESTMENT COMPANY, INVESTMENT TRUST, OR  
 9 INVESTMENT VEHICLE TAKES DELIVERY OF THE COLLATERAL FOR ANY  
 10 REPURCHASE AGREEMENT, EITHER DIRECTLY OR THROUGH AN  
 11 AUTHORIZED CUSTODIAN.

12 NEW SECTION. Section 114. Deposits. (1) The trustee  
 13 has the power to deposit trust funds at reasonable interest  
 14 with any of the following:

15 (a) an insured commercial or savings bank;  
 16 (b) an insured building and loan association; or  
 17 (c) an insured credit union.

18 (2) A trustee may deposit trust funds as described in  
 19 subsection (1) in a financial institution operated by, or  
 20 that is an affiliate of, the trustee. For the purpose of  
 21 this subsection, "affiliate" means a corporation that  
 22 directly or indirectly through one or more intermediaries  
 23 controls, is controlled by, or is under common control with  
 24 another domestic or foreign corporation.

25 (3) This section does not limit the power of a trustee

1 in a proper case to deposit trust funds in institutions as  
 2 described in subsection (1) that are subject to notice or  
 3 other conditions respecting withdrawal prescribed by law or  
 4 governmental regulation.

5 (4) Nothing in this section prevents the trustee from  
 6 holding an amount of trust property reasonably necessary for  
 7 the orderly administration of the trust in the form of cash  
 8 or in a checking account without interest.

9 **NEW SECTION. Section 115.** Acquisition and disposition  
 10 of property. The trustee has the power to acquire or dispose  
 11 of property, for cash or on credit, at public or private  
 12 sale, or by exchange.

13 **NEW SECTION. Section 116.** Management of property. The  
 14 trustee has the power to manage, control, divide, develop,  
 15 improve, exchange, partition, change the character of, or  
 16 abandon trust property or any interest therein.

17 **NEW SECTION. Section 117.** Encumbrances. The trustee  
 18 has the power to encumber, mortgage, or pledge trust  
 19 property for a term within or extending beyond the term of  
 20 the trust in connection with the exercise of any power  
 21 vested in the trustee.

22 **NEW SECTION. Section 118.** Repairs and alterations of  
 23 property. The trustee has the power to do any of the  
 24 following:

25 (1) make ordinary or extraordinary repairs,

1 alterations, improvements in buildings or other trust  
 2 property;

3 (2) demolish any improvements; or

4 (3) raze existing or erect new party walls or  
 5 buildings.

6 **NEW SECTION. Section 119.** Development of land. The  
 7 trustee has the power to do any of the following:

8 (1) subdivide or develop land;

9 (2) dedicate land to public use;

10 (3) make or obtain the vacation of plats and adjust  
 11 boundaries;

12 (4) adjust differences in valuation on exchange or  
 13 partition by giving or receiving consideration; or

14 (5) dedicate easements to public use without  
 15 consideration.

16 **NEW SECTION. Section 120.** Leases. The trustee has the  
 17 power to enter into a lease for any purpose as lessor or  
 18 lessee with or without the option to purchase or renew and  
 19 for a term within or extending beyond the term of the trust.

20 **NEW SECTION. Section 121.** Mineral leases. The trustee  
 21 has the power to enter into a lease or arrangement for  
 22 exploration and removal of gas, oil, or other minerals, and  
 23 to enter into a community oil lease or a pooling or  
 24 utilization agreement, and for a term within or extending  
 25 beyond the term of the trust.

1        NEW SECTION. Section 122. Options. The trustee has  
2 the power to grant an option involving disposition of trust  
3 property or to take an option for the acquisition of any  
4 property, and an option may be granted or taken that is  
5 exercisable beyond the term of the trust.

6        NEW SECTION. Section 123. Voting rights with respect  
7 to corporate shares, memberships, or property. With respect  
8 to any shares of stock of a domestic or foreign corporation,  
9 any membership in a nonprofit corporation, or any other  
10 property, a trustee has the power to do any of the  
11 following:

12        (1) vote in person and give proxies to exercise any  
13 voting rights with respect to the shares, memberships, or  
14 property;

15        (2) waive notice of a meeting or give consent to the  
16 holding of a meeting; or

17        (3) authorize, ratify, approve, or confirm any action  
18 that could be taken by shareholders, members, or property  
19 owners.

20        NEW SECTION. Section 124. Payment of calls and  
21 assessments. The trustee has the power to pay calls,  
22 assessments, and any other sums chargeable or accruing  
23 against or on account of securities.

24        NEW SECTION. Section 125. Stock subscriptions and  
25 conversions. The trustee has the power to sell or exercise

1 stock subscription or conversion rights.

2        NEW SECTION. Section 126. Consent to change in form  
3 of business -- voting trusts. The trustee has the power to  
4 consent, directly or through a committee or other agent, to  
5 the reorganization, consolidation, merger, dissolution, or  
6 liquidation of a corporation or other business enterprise,  
7 and to participate in voting trusts, pooling arrangements,  
8 and foreclosures, and in connection therewith, to deposit  
9 securities with and transfer title and delegate discretions  
10 to any protective or other committee as the trustee may  
11 consider advisable.

12        NEW SECTION. Section 127. Holding securities in name  
13 of nominee. The trustee has the power to hold a security in  
14 the name of a nominee or in other form without disclosure of  
15 the trust so that title to the security may pass by  
16 delivery, but the trustee is liable for any act of the  
17 nominee in connection with the security so held.

18        NEW SECTION. Section 128. Insurance. The trustee has  
19 the power to insure the property of the trust against damage  
20 or loss and to insure the trustee against liability with  
21 respect to third persons.

22        NEW SECTION. Section 129. Borrowing money. The  
23 trustee has the power to borrow money for any trust purpose  
24 to be repaid from trust property.

25        NEW SECTION. Section 130. Payment and settlement of

1 claims. The trustee has the power to do any of the  
2 following:

- 3 (1) pay or contest any claim;
- 4 (2) settle a claim by or against the trust by
- 5 compromise, arbitration, or otherwise; or
- 6 (3) release, in whole or in part, any claim belonging
- 7 to the trust.

8 NEW SECTION. Section 131. Payment of taxes, trustee's  
9 compensation, and other expenses. The trustee has the power  
10 to pay taxes, assessments, reasonable compensation of the  
11 trustee and of employees and agents of the trust, and other  
12 expenses incurred in the collection, care, administration,  
13 and protection of the trust.

14 NEW SECTION. Section 132. Loans to beneficiary. The  
15 trustee has the following powers:

- 16 (1) to make loans out of trust property to the
- 17 beneficiary on terms and conditions that the trustee
- 18 determines are fair and reasonable under the circumstances;
- 19 and
- 20 (2) to guarantee loans to the beneficiary by
- 21 encumbrances on trust property.

22 NEW SECTION. Section 133. Distribution to  
23 beneficiaries under legal disability. The trustee has the  
24 power to pay any sum distributable to a beneficiary, without  
25 regard to whether the beneficiary is under a legal

1 disability, by paying the sum to the beneficiary or by  
2 paying the sum to another person for the use or benefit of  
3 the beneficiary.

4 NEW SECTION. Section 134. Nature and value of  
5 distributions. The trustee has the power to effect  
6 distribution of property and money in divided or undivided  
7 interests and to adjust resulting differences in valuation.  
8 A distribution in kind may be made pro rata or non-pro rata.

9 NEW SECTION. Section 135. Hiring persons. The trustee  
10 has the power to hire persons, including accountants,  
11 attorneys, auditors, investment advisors, or other agents,  
12 even if they are associated or affiliated with the trustee,  
13 to advise or assist the trustee in the performance of  
14 administrative duties.

15 NEW SECTION. Section 136. Execution and delivery of  
16 instruments. The trustee has the power to execute and  
17 deliver all instruments which are needed to accomplish or  
18 facilitate the exercise of the powers vested in the trustee.

19 NEW SECTION. Section 137. Actions and proceedings.  
20 The trustee has the power to prosecute or defend actions,  
21 claims, or proceedings for the protection of trust property  
22 and of the trustee in the performance of the trustee's  
23 duties.

24 NEW SECTION. Section 138. Short title. [Sections 138  
25 through 150] may be cited as the "Revised Uniform Principal

1 and Income Act".

2 **NEW SECTION. Section 139.** Definitions. As used in  
3 [sections 138 through 150], the following definitions apply:

4 (1) "Income beneficiary" means the person to whom  
5 income is presently payable or for whom it is accumulated  
6 for distribution as income.

7 (2) "Inventory value" means the adjusted basis for  
8 federal income tax purposes.

9 (3) "Remainder beneficiary" means the person entitled  
10 to principal, including income which has been accumulated  
11 and added to principal.

12 (4) "Trustee" means the original trustee, any  
13 succeeding or added trustee, and the personal representative  
14 of a decedent's estate whenever a provision of this part is  
15 applicable to the estate.

16 **NEW SECTION. Section 140.** Duty of trustee as to  
17 receipts and expenditures. (1) A trust shall be administered  
18 with due regard to the respective interests of income  
19 beneficiaries and remainder beneficiaries. A trust is so  
20 administered with respect to the allocation of receipts and  
21 expenditures if a receipt is credited or an expenditure is  
22 charged to income or principal or partly to each in any of  
23 the following ways:

24 (a) in accordance with the terms of the trust  
25 instrument, notwithstanding contrary provisions of this

1 part;

2 (b) in the absence of any contrary terms of the trust  
3 instrument, in accordance with the provisions of this part;  
4 or

5 (c) if neither subsection (a) nor (b) is applicable,  
6 in accordance with the standard of care provided in [section  
7 89] and with what is reasonable and equitable in view of the  
8 interests of those entitled to income as well as of those  
9 entitled to principal.

10 (2) If the trust gives the trustee discretion in  
11 crediting a receipt or charging an expenditure to income or  
12 principal or partly to each, no inference that the trustee  
13 has improperly exercised such discretion arises from the  
14 fact that the trustee has made an allocation contrary to a  
15 provision of this part.

16 **NEW SECTION. Section 141.** Income -- principal --  
17 charges. (1) Income is the return in money or property  
18 derived from the use of principal, including return received  
19 as:

20 (a) rent of real or personal property, including sums  
21 received for cancellation or renewal of a lease;

22 (b) interest on money lent, including sums received as  
23 consideration for the prepayment of principal except as  
24 provided in [section 145] on bond premium and bond discount;

25 (c) income earned during administration of a

1 decedent's estate as provided in [section ~~144~~ 143];

2 (d) corporate distributions as provided in [section

3 ~~145~~ 144];

4 (e) accrued increment on bonds or other obligations

5 issued at discount as provided in [section 145];

6 (f) receipts from business and farming operations as

7 provided in [section 146];

8 (g) receipts from disposition of natural resources as

9 provided in [sections 147 and 148]; or

10 (h) receipts from other principal subject to depletion

11 as provided in [section 149].

12 (2) Principal is the property which has been set aside

13 by the owner or the person legally empowered so that it is

14 held in trust eventually to be delivered to a remainder

15 beneficiary, while the return or use of the principal is in

16 the meantime taken or received by or held for accumulation

17 for an income beneficiary. Principal includes the following:

18 (a) consideration received by the trustee on the sale

19 or other transfer of principal or a repayment of a loan or

20 as a refund or replacement or change in the form of

21 principal;

22 (b) proceeds of property taken on eminent domain

23 proceedings;

24 (c) proceeds of insurance upon property forming part

25 of the principal except proceeds of insurance upon a

1 separate interest of an income beneficiary;

2 (d) stock dividends, receipts on liquidation of a

3 corporation, and other corporate distributions as provided

4 in [section 144];

5 (e) receipts from the disposition of corporate

6 securities as provided in [section 145];

7 (f) royalties and other receipts from disposition of

8 natural resources as provided in [sections 147 and 148];

9 (g) receipts from other principal subject to depletion

10 as provided in [section 149];

11 (h) any profit resulting from any change in the form

12 of principal; or

13 (i) any allowances for depreciation established under

14 [section 150(1)(b)].

15 (3) After determining income and principal in

16 accordance with the terms of the trust instrument or of this

17 part, the trustee shall charge to income or principal the

18 expenses and other charges as provided in [section 150].

19 NEW SECTION. **Section 142.** When right to income arises

20 -- apportionment of income. (1) An income beneficiary is

21 entitled to income from the date specified in the trust

22 instrument or, if none is specified, from the date an item

23 of property becomes subject to the trust. In the case of an

24 item of property becoming subject to a trust by reason of a

25 person's death, it becomes subject to the trust as of the



1 date of the death of the person even though there is an  
2 intervening period of administration of the person's estate.

3 (2) Upon property becoming subject to a trust by  
4 reason of a person's death:

5 (a) Receipts due but not paid at the date of death of  
6 the person are principal.

7 (b) Receipts in the form of periodic payments (other  
8 than corporate distributions to stockholders), including  
9 rent, interest, or annuities, not due at the date of the  
10 death of the person shall be treated as accruing from day to  
11 day. That portion of the receipt accruing before the date of  
12 death is principal and the balance is income.

13 (3) In all other cases, any receipt from  
14 income-producing property is income even though the receipt  
15 was earned or accrued in whole or in part before the date  
16 when the property became subject to the trust.

17 (4) On termination of an income interest, the income  
18 beneficiary whose interest is terminated, or his or her  
19 estate, is entitled to income:

20 (a) undistributed on the date of termination;

21 (b) due but not paid to the trustee on the date of  
22 termination; and

23 (c) in the form of periodic payments (other than  
24 corporate distributions to stockholders), including rent,  
25 interest, or annuities, not due on the date of termination,

1 accrued from day to day.

2 (5) Corporate distributions to stockholders shall be  
3 treated as due on the day fixed by the corporation for  
4 determination of stockholders of record entitled to  
5 distribution or, if no date is fixed, on the date of  
6 declaration of the distribution by the corporation.

7 NEW SECTION. **Section 143.** Income earned during  
8 administration of decedent's estate. (1) Unless the will  
9 otherwise provides and subject to subsection (2), all  
10 expenses incurred in connection with the settlement of a  
11 decedent's estate, including debts, funeral expenses, estate  
12 taxes, interest and penalties concerning taxes, family  
13 allowances, fees of attorneys and personal representatives,  
14 and court costs, shall be charged against the principal of  
15 the estate.

16 (2) Unless the will otherwise provides, income from  
17 the property of a decedent's estate after the death of the  
18 testator and before distribution, including income from  
19 property used to discharge liabilities, shall be determined  
20 in accordance with the rules applicable to a trustee under  
21 [sections 1 through 164] and distributed as follows:

22 (a) to specific legatees and devisees, the income from  
23 the property bequeathed or devised to them respectively,  
24 less taxes, ordinary repairs, and other expenses of  
25 management and operation of the property, and an appropriate

1 portion of interest accrued since the death of the testator  
2 and of taxes imposed on income (excluding taxes on capital  
3 gains) that accrue during the period of administration;

4 (b) to all other legatees and devisees, except  
5 legatees of pecuniary bequests not in trust, the balance of  
6 the income, less the balance of taxes, ordinary repairs, and  
7 other expenses of management and operation of all property  
8 from which the estate is entitled to income, interest  
9 accrued since the death of the testator, and taxes imposed  
10 on income (excluding taxes on capital gains) that accrue  
11 during the period of administration, in proportion to their  
12 respective interests in the undistributed property of the  
13 estate computed at times of distribution on the basis of  
14 inventory value.

15 (3) Income received by a trustee under subsection (2)  
16 shall be treated as income of the trust.

17 **NEW SECTION. Section 144. Corporate distributions.**

18 (1) Corporate distributions of shares of the distributing  
19 corporation, including distributions in the form of a stock  
20 split or stock dividend, are principal. A right to  
21 subscribe to shares or other securities issued by the  
22 distributing corporation accruing to stockholders on account  
23 of their stock ownership and the proceeds of any sale of the  
24 right, are principal.

25 (2) Except to the extent that the corporation

1 indicates that some part of a corporate distribution is a  
2 settlement of preferred or guaranteed dividends accrued  
3 since the trustee became a stockholder or is in lieu of an  
4 ordinary cash dividend, a corporate distribution is  
5 principal if the distribution is pursuant to any of the  
6 following:

7 (a) a call of shares;

8 (b) a merger, consolidation, reorganization, or other  
9 plan by which assets of the corporation are acquired by  
10 another corporation; or

11 (c) a total or partial liquidation of the corporation,  
12 including any distribution which the corporation indicates  
13 is a distribution in total or partial liquidation or any  
14 distribution of assets, other than cash, pursuant to a court  
15 decree or final administrative order by a government agency  
16 ordering distribution of the particular assets.

17 (3) Distributions made from ordinary income by a  
18 regulated investment company or by a trust qualifying and  
19 electing to be taxed under federal law as a real estate  
20 investment trust are income. All other distributions made by  
21 the company or trust, including distributions from capital  
22 gains, depreciation, or depletion, whether in the form of  
23 cash or an option to take new stock or cash or an option to  
24 purchase additional shares, are principal.

25 (4) Except as provided in subsections (1) through (3),

1 all corporate distributions are income, including cash  
 2 dividends, distributions of or rights to subscribe to shares  
 3 or securities or obligations of corporations other than the  
 4 distributing corporation, and the proceeds of the rights or  
 5 property distributions. Except as provided in subsections  
 6 (2) and (3), if the distributing corporation gives a  
 7 stockholder an option to receive a distribution either in  
 8 cash or in its own shares, the distribution chosen is  
 9 income.

10 (5) The trustee may rely upon any statement of the  
 11 distributing corporation as to any fact relevant under any  
 12 provision of this part concerning the source or character of  
 13 dividends or distributions of corporate assets.

14 **NEW SECTION. Section 145. Bond premium and discount.**

15 (1) Bonds or other obligations for the payment of money are  
 16 principal at their inventory value, except as provided in  
 17 subsection (2) for discount bonds. No provision shall be  
 18 made for amortization of bond premiums or for accumulation  
 19 for discount. The proceeds of sale, redemption, or other  
 20 disposition of the bonds or obligations are principal.

21 (2) The increment in value of a bond or other  
 22 obligation for the payment of money payable at a future time  
 23 in accordance with a fixed schedule of appreciation in  
 24 excess of the price at which it was issued is distributable  
 25 as income. The increment in value is distributable to the

1 beneficiary who was the income beneficiary at the time of  
 2 increment from the first principal cash available or, if  
 3 none is available, when realized by sale, redemption, or  
 4 other disposition. Whenever unrealized increment is  
 5 distributed as income but out of principal, the principal  
 6 shall be reimbursed for the increment when realized.

7 **NEW SECTION. Section 146. Business and farming**  
 8 **operations.** (1) If a trustee uses any part of the principal  
 9 in the continuance of a business of which the trustor was a  
 10 sole proprietor or a partner, the net profits of the  
 11 business, computed in accordance with recognized methods of  
 12 accounting for a comparable business, are income. If a loss  
 13 results in any fiscal or calendar year, the loss falls on  
 14 principal and may not be carried into any other fiscal or  
 15 calendar year for purposes of calculating net income.

16 (2) Recognized methods of accounting for a comparable  
 17 business shall be used to determine income from an  
 18 agricultural or farming operation, including the raising of  
 19 animals or the operation of a nursery.

20 **NEW SECTION. Section 147. Disposition of natural**  
 21 **resources.** (1) If any part of the principal consists of a  
 22 right to receive royalties, overriding or limited royalties,  
 23 working interests, production payments, net profit  
 24 interests, or other interests in minerals or other natural  
 25 resources in, on, or under land, the receipts from taking

1 the natural resources from the land shall be allocated as  
2 follows:

3 (a) If received as rent on a lease or extension  
4 payments on a lease, the receipts are income.

5 (b) If received from a production payment, the  
6 receipts are income to the extent of any factor for interest  
7 or its equivalent provided in the governing instrument.  
8 There shall be allocated to principal the fraction of the  
9 balance of the receipts which the unrecovered cost of the  
10 production payment bears to the balance owed on the  
11 production payment, exclusive of any factor for interest or  
12 its equivalent. The receipts not allocated to principal are  
13 income.

14 (c) If received as a royalty, overriding or limited  
15 royalty or bonus, or from a working, net profit, or any  
16 other interest in minerals or other natural resources,  
17 receipts not provided for in subsections (1)(a) and (1)(b)  
18 shall be apportioned on a yearly basis in accordance with  
19 this paragraph whether or not any natural resource was being  
20 taken from the land at the time the trust was established.  
21 The receipts shall be allocated entirely to income or  
22 apportioned between income and principal as the trustee in  
23 its discretion may determine, but the amount added to  
24 principal as an allowance for depletion may not exceed the  
25 lesser of:

1 (i) the percentage of gross receipts allowed as a  
2 deduction for depletion in computing taxable income for  
3 federal income tax purposes or

4 (ii) 50% of the net receipts remaining after payment of  
5 expenses, direct and indirect, computed without allowance  
6 for depletion.

7 (2) This section does not apply to timber, water,  
8 soil, sod, dirt, turf, or mosses.

9 NEW SECTION. Section 148. Timber. If any part of the  
10 principal consists of land from which merchantable timber  
11 may be removed, the receipts from taking the timber from the  
12 land shall be allocated in accordance with [section  
13 140(1)(c)].

14 NEW SECTION. Section 149. Other property subject to  
15 depletion. Except as provided in [sections 147 and 148], if  
16 the principal consists of property subject to depletion,  
17 including leaseholds, patents, copyrights, royalty rights,  
18 and rights to receive payments on a contract for deferred  
19 compensation, receipts from the property, not in excess of  
20 5% per year of its inventory value, are income, and the  
21 balance is principal.

22 NEW SECTION. Section 150. Charges against income and  
23 principal. (1) The following charges shall be made against  
24 income:

25 (a) ordinary expenses incurred in connection with the

1 administration, management, or preservation of the trust  
2 property, including:

3 (i) regularly recurring taxes assessed against any  
4 portion of the principal;

5 (ii) water rates;

6 (iii) premiums on insurance taken upon the interests of  
7 the income beneficiary, remainder beneficiary, or trustee;

8 (iv) interest paid by the trustee; and

9 (v) ordinary repairs;

10 (b) a reasonable allowance for depreciation on  
11 property subject to depreciation under generally accepted  
12 accounting principles, but no allowance may be made for  
13 depreciation on that portion of any real property used by a  
14 beneficiary as a residence or for depreciation of any  
15 property held by the trustee on July 1, 1983, for which the  
16 trustee was not then making an allowance for depreciation;

17 (c) not less than one-half of court costs, attorney  
18 fees, and other fees on periodic judicial accounting, unless  
19 the court directs otherwise;

20 (d) court costs, attorney fees, and fees on other  
21 accountings or judicial proceedings if the matter primarily  
22 concerns the income interest, unless the court directs  
23 otherwise;

24 (e) not less than one-half of the trustee's regular  
25 compensation, whether based on a percentage of principal or

1 income, and all expenses reasonably incurred for current  
2 management of principal and application of income, unless  
3 the court directs otherwise; and

4 (f) any tax levied upon receipts defined as income  
5 under [sections 138 through 150] or the trust instrument and  
6 payable by the trustee.

7 (2) If charges against income are of unusual amount,  
8 the trustee may, by means of reserves or other reasonable  
9 means, charge them over a reasonable period of time and  
10 withhold from distribution sufficient sums to regularize  
11 distributions.

12 (3) (a) The following charges shall be made against  
13 principal:

14 (i) trustee's compensation not chargeable to income  
15 under subsections (1)(d) and (1)(e);

16 (ii) special compensation of trustees;

17 (iii) expenses reasonably incurred in connection with  
18 principal, court costs, and attorney fees primarily  
19 concerning matters of principal; and

20 (iv) trustee's compensation computed on principal as an  
21 acceptance, distribution, or termination fee;

22 (b) charges not provided for in subsection (1),  
23 including:

24 (i) the costs of investing and reinvesting principal;

25 (ii) the payments on principal of an indebtedness,

1 including a mortgage amortized by periodic payments of  
 2 principal;  
 3 (iii) expenses for preparation of property for rental  
 4 or sale; and  
 5 (iv) unless the court directs otherwise, expenses  
 6 incurred in maintaining or defending any action to construe  
 7 the trust or protect it or the property or assure the title  
 8 of any trust property;  
 9 (c) extraordinary repairs or expenses incurred in  
 10 making a capital improvement to principal, including special  
 11 assessments, but a trustee may establish an allowance for  
 12 depreciation DEPRECIATION out of income to the extent  
 13 permitted by subsection (1)(b) and by [section 146];  
 14 (d) any tax levied upon profit, gain, or other  
 15 receipts allocated to principal, notwithstanding  
 16 denomination of the tax as an income tax by the taxing  
 17 authority; and  
 18 (e) if an estate or inheritance tax is levied in  
 19 respect to a trust in which both an income beneficiary and a  
 20 remainder beneficiary have an interest, any amount  
 21 apportioned to the trust, including interest and penalties,  
 22 even though the income beneficiary also has rights in the  
 23 principal.  
 24 (4) Regularly recurring charges payable from income  
 25 shall be apportioned to the same extent and in the same

1 manner that income is apportioned under [section 142].

2 NEW SECTION. Section 151. Breach of trust. A  
 3 violation by the trustee of any duty that the trustee owes  
 4 the beneficiary is a breach of trust.

5 NEW SECTION. Section 152. Trustee's liability to  
 6 beneficiary for acts of agent. (1) Except as provided in  
 7 subsection (2), the trustee is not liable to the beneficiary  
 8 for the acts or omissions of an agent.

9 (2) The trustee is liable to the beneficiary for an  
 10 act or omission of an agent employed by the trustee in the  
 11 administration of the trust that would be a breach of the  
 12 trust if committed by the trustee under any of the following  
 13 circumstances:

14 (a) whenever the trustee has the power to direct the  
 15 act of the agent;

16 (b) whenever the trustee delegates to the agent the  
 17 authority to perform an act that the trustee is under a duty  
 18 not to delegate;

19 (c) whenever the trustee does not use reasonable care  
 20 in the selection of the agent or the retention of the agent  
 21 selected by the trustee;

22 (d) whenever the trustee does not exercise proper  
 23 supervision over the agent's conduct in a case where the  
 24 trustee has the power to supervise the agent;

25 (e) whenever the trustee conceals the act of the

1 agent; or

2 (f) whenever the trustee neglects to take reasonable  
3 steps to compel the agent to redress the wrong in a case  
4 where the trustee knows of the agent's acts or omissions.

5 (3) The liability of a trustee for acts or omissions  
6 of agents that occurred before October 1, 1989, is governed  
7 by prior law and not by this section.

8 NEW SECTION. Section 153. Trustee's liability to  
9 beneficiary for acts of cotrustee. (1) Except as provided in  
10 subsection (2), a trustee is not liable to the beneficiary  
11 for a breach of trust committed by a cotrustee.

12 (2) A trustee is liable to the beneficiary for a  
13 breach committed by a cotrustee under any of the following  
14 circumstances:

15 (a) whenever the trustee participates in a breach of  
16 trust committed by the cotrustee;

17 (b) whenever the trustee improperly delegates the  
18 administration of the trust to the cotrustee;

19 (c) whenever the trustee approves, knowingly  
20 acquiesces in, or conceals a breach of trust committed by  
21 the cotrustee;

22 (d) whenever the trustee negligently enables the  
23 cotrustee to commit a breach of trust; or

24 (e) whenever the trustee neglects to take reasonable  
25 steps to compel the cotrustee to redress a breach of trust

1 in a case where the trustee knows or has information from  
2 which the trustee reasonably should have known of the  
3 breach.

4 (3) The liability of a trustee for acts or omissions  
5 of a cotrustee that occurred before October 1, 1989, is  
6 governed by prior law and not by this section.

7 NEW SECTION. Section 154. Trustee's liability to  
8 beneficiary for acts of predecessor. (1) Except as provided  
9 in subsection (2), a successor trustee is not liable to the  
10 beneficiary for a breach of trust committed by a predecessor  
11 trustee.

12 (2) A successor trustee is liable to the beneficiary  
13 for breach of trust involving acts or omissions of a  
14 predecessor trustee in any of the following circumstances:

15 (a) whenever the successor trustee knows or has  
16 information from which the successor trustee reasonably  
17 should have known of a situation constituting a breach of  
18 trust committed by the predecessor trustee, and the  
19 successor trustee improperly permits it to continue;

20 (b) whenever the successor trustee neglects to take  
21 reasonable steps to compel the predecessor trustee to  
22 deliver the trust property to the successor trustee; or

23 (c) whenever the successor trustee neglects to take  
24 reasonable steps to redress a breach of trust committed by  
25 the predecessor trustee in a case where the successor

1 trustee knows or has information from which the successor  
2 trustee should have known of the predecessor trustee's  
3 breach.

4 (3) The liability of a trustee for acts or omissions  
5 of a predecessor trustee that occurred before October 1,  
6 1989, is governed by prior law and not by this section.

7 NEW SECTION. Section 155. Remedies for breach of  
8 trust. (1) If a trustee commits a breach of trust, or  
9 threatens to commit a breach of trust, a beneficiary or  
10 cotrustee of the trust may commence a proceeding for any of  
11 the following purposes that is appropriate:

12 (a) to compel the trustee to perform the trustee's  
13 duties;

14 (b) to enjoin the trustee from committing a breach of  
15 trust;

16 (c) to compel the trustee to redress a breach of trust  
17 by payment of money or otherwise;

18 (d) to appoint a receiver or temporary trustee to take  
19 possession of the trust property and administer the trust;

20 (e) to remove the trustee;

21 (f) subject to [section 210], to set aside acts of the  
22 trustee;

23 (g) to reduce or deny compensation of the trustee;

24 (h) subject to [section 210], to impose an equitable  
25 lien or a constructive trust on trust property; or

1 (i) subject to [section 210], to trace trust property  
2 that has been wrongfully disposed of and recover the  
3 property or its proceeds.

4 (2) The provision of remedies for breach of trust in  
5 subsection (1) does not prevent resort to any other  
6 appropriate remedy provided by statute or the common law.

7 NEW SECTION. Section 156. Remedies for breach  
8 exclusively in equity. The remedies of a beneficiary against  
9 the trustee are exclusively in equity.

10 NEW SECTION. Section 157. Measure of liability for  
11 breach of trust. (1) If the trustee commits a breach of  
12 trust, the trustee is chargeable with any of the following  
13 that is appropriate under the circumstances:

14 (a) any loss or depreciation in value of the trust  
15 estate resulting from the breach of trust, with interest;

16 (b) any profit made by the trustee through the breach  
17 of trust, with interest; or

18 (c) any profit that would have accrued to the trust  
19 estate if the loss of profit is the result of the breach of  
20 trust.

21 (2) If the trustee has acted reasonably under the  
22 circumstances as known to the trustee, the court, in its  
23 discretion, may excuse the trustee in whole or in part from  
24 liability under subsection (1) if it would be equitable to  
25 do so.



**NEW SECTION. Section 158.** Measure of liability for interest. If the trustee is liable for interest pursuant to [section 157], the trustee is liable for the greater of the following amounts:

(1) the amount of interest that accrues at the legal rate on judgments; or

(2) the amount of interest actually received.

**NEW SECTION. Section 159.** Limitations on proceedings against trustee. (1) Unless a claim is previously barred by adjudication, consent, limitation, or otherwise:

(a) If a beneficiary has received an interim or final account in writing, or other written report, that adequately discloses the existence of a claim against the trustee for breach of trust, the claim is barred as to that beneficiary unless a proceeding to assert the claim is commenced within 3 years after receipt of the account or report. An account or report adequately discloses existence of a claim if it provides sufficient information so that the beneficiary knows of the claim or reasonably should have inquired into the existence of the claim.

(b) If an interim or final account or other report does not adequately disclose the existence of a claim against the trustee for breach of trust, the claim is barred as to that beneficiary unless a proceeding to assert the claim is commenced within 3 years after the beneficiary

discovered, or reasonably should have discovered, the existence of the claim.

(2) For the purpose of subsection (1), a beneficiary is considered to have received an account or report, as follows:

(a) in the case of an adult who is reasonably capable of understanding the account or report, if it is received by the adult personally;

(b) in the case of an adult who is not reasonably capable of understanding the account or report, if it is received by the person's legal representative, including a guardian ad litem or other person appointed for this purpose; or

(c) in the case of a minor, if it is received by the minor's guardian or, if the minor does not have a guardian, if it is received by the minor's parent so long as the parent does not have a conflict of interest.

(3) The limitations period applicable to actions by a beneficiary against a trustee on a claim that arose before October 1, 1989, is governed by this section, except that a claim arising before October 1, 1989, is not barred by this section until October 1, 1990.

**NEW SECTION. Section 160.** Exculpation of trustee. (1) Except as provided in subsection (2), the trustee can be relieved of liability for breach of trust by provisions in

1 the trust instrument.

2 (2) A provision in the trust instrument is not  
3 effective to relieve the trustee of liability:

4 (a) for breach of trust committed intentionally, with  
5 gross negligence, or with reckless indifference to the  
6 interest of the beneficiary; or

7 (b) for any profit that the trustee derives from a  
8 breach of trust.

9 NEW SECTION. Section 161. Nonliability for following  
10 instructions under revocable trust. (1) Notwithstanding  
11 [section 160], a trustee of a revocable trust is not liable  
12 to a beneficiary for any act performed or omitted pursuant  
13 to written directions from the person holding the power to  
14 revoke, including a person to whom the power to direct the  
15 trustee is delegated.

16 (2) Subsection (1) applies to a trust that is  
17 revocable in part with respect to the interest of the  
18 beneficiary in that part of the trust property.

19 NEW SECTION. Section 162. Consent of beneficiary to  
20 relieve trustee of liability for breach of trust. (1) Except  
21 as provided in subsections (2) and (3), a beneficiary may  
22 not hold the trustee liable for an act or omission of the  
23 trustee as a breach of trust if the beneficiary consented to  
24 the act or omission before or at the time of the act or  
25 omission.

1 (2) The consent of the beneficiary does not preclude  
2 the beneficiary from holding the trustee liable for a breach  
3 of trust in any of the following circumstances:

4 (a) whenever the beneficiary was under an incapacity  
5 at the time of the consent or of the act or omission;

6 (b) whenever the beneficiary at the time consent was  
7 given did not know of his rights and of the material facts  
8 that the trustee knew or should have known and that the  
9 trustee did not reasonably believe that the beneficiary  
10 knew; or

11 (c) whenever the consent of the beneficiary was  
12 induced by improper conduct of the trustee.

13 (3) Whenever the trustee has an interest in the  
14 transaction adverse to the interest of the beneficiary, the  
15 consent of the beneficiary does not preclude the beneficiary  
16 from holding the trustee liable for a breach of trust under  
17 any of the circumstances described in subsection (2) or  
18 whenever the transaction to which the beneficiary consented  
19 was not fair and reasonable to the beneficiary.

20 NEW SECTION. Section 163. Discharge of trustee's  
21 liability by release or contract. (1) Except as provided in  
22 subsection (2), a beneficiary may be precluded from holding  
23 the trustee liable for a breach of trust by the  
24 beneficiary's release or contract effective to discharge the  
25 trustee's liability to the beneficiary for that breach.

1 (2) A release or contract is not effective to  
2 discharge the trustee's liability for a breach of trust in  
3 any of the following circumstances:

4 (a) whenever the beneficiary was under an incapacity  
5 at the time of making the release or contract;

6 (b) whenever the beneficiary did not know of his  
7 rights and of the material facts:

8 (i) that the trustee knew or reasonably should have  
9 known; and

10 (ii) that the trustee did not reasonably believe that  
11 the beneficiary knew;

12 (c) whenever the release or contract of the  
13 beneficiary was induced by improper conduct of the trustee;  
14 or

15 (d) whenever the transaction involved a bargain with  
16 the trustee that was not fair and reasonable.

17 NEW SECTION. Section 164. Discharge of trustee's  
18 liability by subsequent affirmance. (1) Except as provided  
19 in subsection (2), if the trustee, in breach of trust,  
20 enters into a transaction that the beneficiary may at his  
21 option reject or affirm, and the beneficiary affirms the  
22 transaction, the beneficiary may not thereafter reject it  
23 and hold the trustee liable for any loss occurring after the  
24 trustee entered into the transaction.

25 (2) The affirmance of a transaction by the beneficiary

1 does not preclude the beneficiary from holding a trustee  
2 liable for a breach of trust if, at the time of the  
3 affirmance, any of the following circumstances existed:

4 (a) the beneficiary was under an incapacity;

5 (b) the beneficiary did not know of his rights and of  
6 the material facts:

7 (i) that the trustee knew or reasonably should have  
8 known; and

9 (ii) that the trustee did not reasonably believe that  
10 the beneficiary knew;

11 (c) the affirmance was induced by improper conduct of  
12 the trustee; or

13 (d) the transaction involved a bargain with the  
14 trustee that was not fair and reasonable.

15 NEW SECTION. Section 165. Subject matter  
16 jurisdiction. (1) The district court having jurisdiction  
17 over the trust pursuant to [sections 1 through 215] has  
18 exclusive jurisdiction of proceedings concerning the  
19 internal affairs of trusts.

20 (2) The district court having jurisdiction over the  
21 trust pursuant to [sections 1 through 215] has concurrent  
22 jurisdiction of the following:

23 (a) actions and proceedings to determine the existence  
24 of trusts;

25 (b) actions and proceedings by or against creditors or

1 debtors of trusts; and

2 (c) other actions and proceedings involving trustees  
3 and third persons.

4 NEW SECTION. Section 166. Full-power court. In  
5 proceedings concerning the internal affairs of trusts  
6 commenced pursuant to [sections 1 through 215], the court  
7 has all the powers of a district court exercising its  
8 general jurisdiction.

9 NEW SECTION. Section 167. Principal place of  
10 administration of trust. (1) The principal place of  
11 administration of the trust is the usual place where the  
12 day-to-day activity of the trust is carried on by the  
13 trustee or its representative who is primarily responsible  
14 for the administration of the trust.

15 (2) If the principal place of administration of the  
16 trust cannot be determined under subsection (1), it shall be  
17 determined as follows:

18 (a) if the trust has a single trustee, the principal  
19 place of administration of the trust is the trustee's  
20 residence or usual place of business; or

21 (b) if the trust has more than one trustee, the  
22 principal place of administration of the trust is the  
23 residence or usual place of business of any of the  
24 cotrustees as agreed upon by them. If not agreed upon by the  
25 cotrustees, the principal place of administration of the

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

3 NEW SECTION. Section 168. Jurisdiction over trustees  
4 and beneficiaries. Subject to [section 169]:

5 (1) by accepting the trusteeship of a trust having its  
6 principal place of administration in this state the trustee  
7 submits personally to the jurisdiction of the court under  
8 [sections 1 through 215]; and

9 (2) to the extent of their interests in the trust, all  
10 beneficiaries of a trust having its principal place of  
11 administration in this state are subject to the jurisdiction  
12 of the court under [sections 1 through 215].

13 NEW SECTION. Section 169. Basis of jurisdiction over  
14 trust, trust property, and trust parties. The court may  
15 exercise jurisdiction in proceedings under this division on  
16 any basis permitted by Rule 4 of the Rules of Civil  
17 Procedure.

18 NEW SECTION. Section 170. Venue. (1) The proper  
19 county for commencement of a proceeding pursuant to  
20 [sections 165 through 178] is either of the following:

21 (a) in the case of a living trust, the county where  
22 the principal place of administration of the trust is  
23 located; or

24 (b) in the case of a testamentary trust, either the  
25 county where the decedent's estate is administered or where

1 the principal place of administration of the trust is  
2 located.

3 (2) If a living trust has no trustee, the proper  
4 county for commencement of a proceeding for appointing a  
5 trustee is the county where the trust property, or some  
6 portion of the trust property, is located.

7 (3) Except as otherwise provided in subsections (1)  
8 and (2), the proper county for commencement of a proceeding  
9 pursuant to [sections 1 through 215] is determined by the  
10 rules applicable to civil actions generally.

11 NEW SECTION. Section 171. Jury trial. There is no  
12 right to a jury trial in proceedings under [sections 1  
13 through 215] concerning the internal affairs of trusts.

14 NEW SECTION. Section 172. Application of part. This  
15 part applies to notice in proceedings commenced pursuant to  
16 [sections 1 through 215] or notice otherwise required or  
17 permitted by [sections 1 through 215].

18 NEW SECTION. Section 173. Manner of mailing -- when  
19 mailing complete. (1) If a notice or other paper is required  
20 or permitted to be mailed, it shall be sent by first-class  
21 mail.

22 (2) Mailing is complete when the notice or other paper  
23 is deposited in the mail, postage prepaid, addressed to the  
24 person to whom it is mailed.

25 NEW SECTION. Section 174. Personal delivery instead

1 of mailing. If a notice or other paper is required or  
2 permitted to be mailed, it may be delivered personally to  
3 the person to whom it is required or permitted to be mailed.

4 NEW SECTION. Section 175. Proof of giving notice --  
5 conclusiveness of order. (1) Proof of the giving of notice  
6 shall be made at or before the hearing to the satisfaction  
7 of the court.

8 (2) If it appears to the satisfaction of the court  
9 that notice has been regularly given or that the party  
10 entitled to notice has waived, the court shall so find in  
11 its order. When the order becomes final, it is conclusive on  
12 all persons, whether or not in being.

13 NEW SECTION. Section 176. Additional notice. (1) The  
14 court may, on its own motion or on motion of a trustee or  
15 other person interested in the trust, require that further  
16 or additional notice be given at any state of the  
17 proceeding. The court may prescribe the form and method of  
18 the notice to be given.

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

22 NEW SECTION. Section 177. Shortening time. The court  
23 may for good cause shorten the time for giving a notice.

24 NEW SECTION. Section 178. Notice of postponed  
25 hearings. The court may continue or postpone any hearing,

1 from time to time, in the interest of justice, and no  
2 further notice of the continued or postponed hearing is  
3 required unless otherwise ordered by the court.

4 **NEW SECTION. Section 179.** Petitioners -- grounds for  
5 petition. (1) Except as provided in [section 68], a trustee  
6 or beneficiary of a trust may petition the court under  
7 [sections 165 through 203] concerning the internal affairs  
8 of the trust or to determine the existence of the trust.

9 (2) Proceedings concerning the internal affairs of a  
10 trust include, but are not limited to, proceedings for any  
11 of the following purposes:

12 (a) determining questions of construction of a trust  
13 instrument;

14 (b) determining the existence or nonexistence of any  
15 immunity, power, privilege, duty, or right;

16 (c) determining the validity of a trust provision;

17 (d) ascertaining beneficiaries and determining to whom  
18 property shall pass or be delivered upon final or partial  
19 termination of the trust, to the extent the determination is  
20 not made by the trust instrument;

21 (e) settling the accounts and passing upon the acts of  
22 the trustee, including the exercise of discretionary powers;

23 (f) instructing the trustee;

24 (g) compelling the trustee to report information about  
25 the trust or account to the beneficiary, if:

1 (i) the trustee has failed to submit a requested  
2 report or account within 60 days after written request of  
3 the beneficiary; and

4 (ii) no report or account has been made within 6 months  
5 preceding the request;

6 (h) granting powers to the trustee;

7 (i) fixing or allowing payment of the trustee's  
8 compensation;

9 (j) appointing or removing a trustee;

10 (k) accepting the resignation of a trustee;

11 (l) compelling redress of a breach of the trust by any  
12 available remedy;

13 (m) approving or directing the modification or  
14 termination of the trust;

15 (n) approving or directing the combination or division  
16 of trusts;

17 (o) amending or conforming the trust instrument in the  
18 manner required to qualify a decedent's estate for the  
19 charitable estate tax deduction under federal law, including  
20 the addition of mandatory governing instrument requirements  
21 for a charitable remainder trust as required by final  
22 regulations and rulings of the United States internal  
23 revenue service, in any case in which all parties interested  
24 in the trust have submitted written agreement to the  
25 proposed changes or written disclaimer of interest;

- 1 (p) authorizing or directing transfer of a trust or  
 2 trust property to or from another jurisdiction;  
 3 (q) directing transfer of a testamentary trust subject  
 4 to continuing court jurisdiction from one county to another;  
 5 (r) approving removal of a testamentary trust from  
 6 continuing court jurisdiction; or  
 7 (s) reforming or excusing compliance with the  
 8 governing instrument of an organization pursuant to [section  
 9 104].

10 NEW SECTION. Section 180. Commencement of proceeding.

11 (1) A proceeding under [sections 165 through 203] is  
 12 commenced by filing a verified petition stating facts  
 13 showing that the petition is authorized under this chapter  
 14 and the grounds of the petition.

15 (2) When a petition that requires a hearing is filed  
 16 with the court clerk, the clerk shall set the matter for  
 17 hearing.

18 NEW SECTION. Section 181. Dismissal of petition. The  
 19 court may dismiss a petition if it appears that the  
 20 proceeding is not reasonably necessary for the protection of  
 21 the interests of the trustee or beneficiary.

22 NEW SECTION. Section 182. Notice. At least 14 days  
 23 before the time set for the hearing on the petition, the  
 24 petitioner shall cause notice of the time and place of  
 25 hearing to be mailed to any of the following persons who are

1 not petitioners:

- 2 (1) all trustees;  
 3 (2) all beneficiaries who are entitled to notice; and  
 4 (3) the attorney general, if the petition is related  
 5 to a charitable trust subject to the jurisdiction of the  
 6 attorney general, unless the attorney general waives notice.

7 NEW SECTION. Section 183. Request for special notice.

8 (1) If proceedings involving a trust are pending, a  
 9 beneficiary of the trust may, in person or by attorney,  
 10 serve on the trustee or the trustee's attorney and file with  
 11 the court clerk where the proceedings are pending a written  
 12 request stating that the beneficiary desires special notice  
 13 of the filing of petitions in the proceeding relating to any  
 14 or all of the purposes described in [section 179] and giving  
 15 an address for receiving notice by mail. Proof of service of  
 16 the request on the trustee shall be filed with the court  
 17 clerk when the request is filed.

18 (2) Except as provided in subsection (3), after  
 19 serving and filing a request and proof of service pursuant  
 20 to subsection (1), the beneficiary is entitled to notice  
 21 pursuant to [section 182].

22 (3) A request for special notice made by a beneficiary  
 23 whose right to notice is restricted by [section 70] is not  
 24 effective.

25 NEW SECTION. Section 184. Request for copy of

petition. If a trustee or beneficiary has served and filed either a notice of appearance, in person or by counsel, directed to the petitioner or the petitioner's counsel in connection with a particular petition and proceeding or a written request for a copy of the petition, and has given an address to which notice or a copy of the petition may be mailed or delivered, the petitioner shall cause a copy of the petition to be mailed to that person within 5 days after service of the notice of appearance or receipt of the request.

**NEW SECTION. Section 185. Authority to make necessary orders -- temporary trustee.** The court in its discretion may make any orders and take any other action necessary or proper to dispose of the matters presented by the petition, including appointment of a temporary trustee to administer the trust in whole or in part.

**NEW SECTION. Section 186. Appeal.** An appeal may be taken from the grant or denial of any final order made under [sections 165 through 203], except the following:

- (1) compelling the trustee to submit an account or report acts as trustee to a beneficiary pursuant to [section 179(2)(g)];
- (2) accepting the resignation of a trustee pursuant to [section 179(2)(k)]; or
- (3) approving removal of a testamentary trust from

continuing court jurisdiction pursuant to [section 179(2)(r)].

**NEW SECTION. Section 187. Appointment of guardian ad litem.** (1) The court may, on its own motion or on request of a trustee or other person interested in the trust, appoint a guardian ad litem at any stage of a proceeding concerning the trust to represent the interest of any of the following persons, if the court determines that representation of the interest otherwise would be inadequate:

- (a) a minor;
- (b) an incapacitated person;
- (c) an unborn person;
- (d) an unascertained person;
- (e) a person whose identity or address is unknown; or
- (f) a designated class of persons who are not ascertained or are not in being.

(2) If not precluded by a conflict of interest, a guardian ad litem may be appointed to represent several persons or interests.

(3) The reasonable expenses of the guardian ad litem, including compensation and attorney's fees, shall be determined by the court and paid as the court orders, either out of trust property or by the petitioner.

(4) If no guardian ad litem is appointed, an unborn person or an unascertained person is bound by an order to



1 the extent his or her interest is adequately represented by  
2 another party having a substantially identical interest in  
3 the proceeding.

4 NEW SECTION. Section 188. Intermittent judicial  
5 intervention in trust administration. The administration of  
6 trusts is intended to proceed expeditiously and free of  
7 judicial intervention, subject to the jurisdiction of the  
8 court.

9 NEW SECTION. Section 189. Enforcement of  
10 beneficiary's rights under charitable trust by attorney  
11 general. In a case involving a charitable trust subject to  
12 the jurisdiction of the attorney general, the attorney  
13 general may petition under [sections 165 through 203].

14 NEW SECTION. Section 190. Application of part. (1)  
15 [Sections 190 through 195] apply to all of the following:

16 (a) a trust that is subject to [sections 1 through  
17 215]; and

18 (b) any other trust to which the provisions of  
19 [sections 165 through 203] are made applicable by statute or  
20 trust instrument.

21 (2) [Sections 190 through 195] do not prevent the  
22 transfer of the place of administration of a trust or of  
23 trust property to another jurisdiction by any other  
24 available means.

25 NEW SECTION. Section 191. Transfer of place of

1 administration or property from Montana. (1) The court may  
2 make an order for the transfer of the place of  
3 administration of a trust or the transfer of some or all of  
4 the trust property to a jurisdiction outside this state as  
5 provided in [sections 165 through 203].

6 (2) Except as otherwise provided in [sections 190  
7 through 195], proceedings under [sections 165 through 203]  
8 are governed by [sections 190 through 195].

9 NEW SECTION. Section 192. Contents of petition. The  
10 petition for transfer shall set forth all of the following:

11 (1) the names and places of residence of the  
12 following:

13 (a) the trustee administering the trust in this state;  
14 and

15 (b) the trustee, including any domiciliary trustee,  
16 who will administer the trust or trust property in the other  
17 jurisdiction;

18 (2) the names, ages, and places of residence of the  
19 living beneficiaries, as far as known to the petitioner;

20 (3) whether the trustee who will administer the trust  
21 in the other jurisdiction has agreed to accept the trust. If  
22 so, the acceptance or a copy shall be attached as an exhibit  
23 to the petition or otherwise filed with the court;

24 (4) a general statement of the qualifications of the  
25 trustee who will administer the trust in the other

jurisdiction and the amount of fiduciary bond, if any. If the trustee is an individual, the statement shall include the trustee's age;

(5) a general statement of the nature and value of the property of any trust of the same trustor being administered in the other jurisdiction by the trustee who will administer the trust in the other jurisdiction;

(6) the name of the court, if any, having jurisdiction of the trustee in the other jurisdiction or of its accounts or in which a proceeding may be had with respect to administration of the trust or the trustee's accounts;

(7) a statement of the character, condition, location, and value of the trust property sought to be transferred;

(8) whether there is any pending civil action in this state against the trustee arising out of the administration of the trust sought to be transferred; and

(9) a statement of the reasons for the transfer.

**NEW SECTION. Section 193. Notice and hearing.** (1) At least 14 days before the time set for the hearing on the petition, the petitioner shall cause notice of the time and place of the hearing to be mailed to each of the persons named in the petition at their respective addresses as stated in the petition.

(2) Any person interested in the trust, as trustee, beneficiary, or otherwise, may appear and file written

grounds in opposition to the petition.

**NEW SECTION. Section 194. Order granting transfer.**

The court may, in its discretion, grant the petition and order the trustee to transfer the trust property or to transfer the place of administration of the trust to the other jurisdiction if, after hearing, all of the following appear to the court:

(1) the transfer of the trust property to a trustee in another jurisdiction, or the transfer of the place of administration of the trust to another jurisdiction, will promote the best interests of the trust and those interested in it, taking into account the interest in the economical and convenient administration of the trust;

(2) the transfer will not violate the trust instrument; and

(3) any new trustee to whom the trust property is to be transferred is qualified, willing, and able to administer the trust or trust property under the trust instrument.

**NEW SECTION. Section 195. Manner of transfer -- discharge of trustee.** If a transfer is ordered under this chapter, the court may direct the manner of transfer and impose terms and conditions as may be just, including, but not limited to, a requirement for the substitution of a successor trustee in any pending litigation in this state. The delivery of property in accordance with the order of the

1 court is a discharge of the trustee in relation to all  
2 property embraced in the order.

3 NEW SECTION. Section 196. Application. (1) [Sections  
4 196 through 203] apply to a trust, or portion thereof,  
5 administered in a jurisdiction outside this state.

6 (2) [Sections 196 through 203] do not prevent the  
7 transfer of the place of administration of a trust or trust  
8 property to this state by any other available means.

9 NEW SECTION. Section 197. Transfer of place of  
10 administration or property to Montana. (1) The court may  
11 make an order accepting the transfer of the place of  
12 administration of a trust from another jurisdiction to this  
13 state or the transfer of some or all of the trust property  
14 in another jurisdiction to a trustee in this state as  
15 provided in [sections 196 through 203].

16 (2) Except as otherwise provided in [sections 196  
17 through 203], proceedings under [sections 196 through 203]  
18 are governed by this chapter.

19 NEW SECTION. Section 198. Venue. (1) If the petition  
20 requests that a resident of this state be appointed trustee,  
21 the petition shall be filed in the court of the county where  
22 the proposed principal place of administration of the trust  
23 pursuant to [section 167] is located.

24 (2) If the petition requests that only a nonresident  
25 of this state be appointed trustee, the petition shall be

1 filed in the court of the county where either:

2 (a) any beneficiary resides; or

3 (b) a substantial portion of the trust property to be  
4 transferred is located or will be located.

5 NEW SECTION. Section 199. Contents of petition. The  
6 petition for transfer shall set forth all of the following:

7 (1) the names and places of residence of the  
8 following:

9 (a) the trustee administering the trust in the other  
10 jurisdiction; and

11 (b) the proposed trustee to whom administration of the  
12 trust or trust property will be transferred;

13 (2) the names, ages, and places of residence of all  
14 living beneficiaries, as far as known to the petitioner;

15 (3) whether administration of the trust has been  
16 subject to supervision in a jurisdiction outside this state.  
17 If so, the petition shall state whether a petition or  
18 appropriate request for transfer of place of administration  
19 of the trust or trust property to this state has been filed,  
20 if necessary, with the court in the other jurisdiction, and  
21 the status of the petition or request.

22 (4) whether the trustee proposed to administer the  
23 trust in this state has agreed to accept the trust in this  
24 state. If the trustee has agreed, the acceptance shall be  
25 attached as an exhibit to the petition or otherwise filed

1 with the court.

2 (5) a general statement of the qualifications of the  
3 trustee proposed to administer the trust in this state and  
4 the amount of any bond to be requested. If the trustee is an  
5 individual, the statement shall include the trustee's age.

6 (6) a copy of the trust instrument or a statement of  
7 the terms of the trust instrument in effect at the time the  
8 petition is filed, including all amendments thereto;

9 (7) a statement of the character, condition, location,  
10 and value of the trust property sought to be transferred;  
11 and

12 (8) a statement of the reasons for the transfer.

13 **NEW SECTION. Section 200.** Notice and hearing. (1) At  
14 least 14 days before the time set for the hearing on the  
15 petition, the petitioner shall cause notice of the time and  
16 place of the hearing to be mailed to each of the persons  
17 named in the petition at their respective addresses as  
18 stated in the petition.

19 (2) Any person interested in the trust, as trustee,  
20 beneficiary, or otherwise, may appear and file written  
21 grounds in opposition to the petition.

22 **NEW SECTION. Section 201.** Order accepting transfer  
23 and appointing trustee. (1) The court may, in its  
24 discretion, grant the petition and issue an order accepting  
25 transfer of trust property or the place of administration of

1 the trust to this state and appoint a trustee to administer  
2 the trust in this state, if, after hearing, all of the  
3 following appear to the court:

4 (a) the transfer of the trust property to a trustee in  
5 this state, or the transfer of the place of administration  
6 of the trust to this state, will promote the best interests  
7 of the trust and those interested in it, taking into account  
8 the interest in the economical and convenient administration  
9 of the trust;

10 (b) the transfer will not violate the trust  
11 instrument;

12 (c) the trustee appointed by the court to administer  
13 the trust in this state, and to whom the trust property is  
14 to be transferred, is qualified, willing, and able to  
15 administer the trust or trust property under the trust  
16 instrument; and

17 (d) the proper court in the other jurisdiction has  
18 approved the transfer if approval is necessary under the law  
19 of the other jurisdiction.

20 (2) If the court grants the petition under subsection  
21 (1), the court shall require the trustee to give a bond, if  
22 necessary under the law of the other jurisdiction or of this  
23 state, and may require bond as provided in [section 49].

24 **NEW SECTION. Section 202.** Conditional order accepting  
25 transfer. If appropriate to facilitate transfer of the trust

property or the place of administration of a trust to this state, the court may issue a conditional order appointing a trustee to administer the trust in this state and indicating that transfer to this state will be accepted if transfer is approved by the proper court of the other jurisdiction.

**NEW SECTION. Section 203.** Administration of transferred trust. A trust transferred to this state pursuant to [sections 165 through 203] shall be administered in the same manner as a trust of that type created in this state.

**NEW SECTION. Section 204.** Personal liability of trustee to third persons on contracts. (1) Unless otherwise provided in the contract or in [sections 165 through 203], a trustee is not personally liable on a contract properly entered into in the trustee's fiduciary capacity in the course of administration of the trust unless the trustee fails to reveal the trustee's representative capacity or identify the trust in the contract.

(2) The personal liability of a trustee on a contract entered into before October 1, 1989, is governed by prior law and not by this section.

**NEW SECTION. Section 205.** Personal liability of trustee arising from ownership or control of trust estate. A trustee is personally liable for obligations arising from ownership or control of trust property only if the trustee

is personally at fault.

**NEW SECTION. Section 206.** Personal liability of trustee for torts. A trustee is personally liable for torts committed in the course of administration of the trust only if the trustee is personally at fault.

**NEW SECTION. Section 207.** Liability of dissenting cotrustee to third persons. (1) A cotrustee who does not join in exercising a power held by three or more cotrustees is not liable to third persons for the consequences of the exercise of the power.

(2) A dissenting cotrustee who joins in an action at the direction of the majority cotrustees is not liable to third persons for the action if the dissenting cotrustee expresses the dissent in writing to any other cotrustee at or before the time the action is taken.

(3) This section does not excuse a cotrustee from liability for failure to discharge the cotrustee's duties as a trustee.

**NEW SECTION. Section 208.** Assertion of claims against trust. A claim based on a contract entered into by a trustee in the trustee's representative capacity, on an obligation arising from ownership or control of trust property, or on a tort committed in the course of administration of the trust may be asserted against the trust by proceeding against the trustee in the trustee's representative capacity, whether or

1 not the trustee is personally liable on the claim.

2 NEW SECTION. Section 209. Liability as between  
3 trustee and trust estate. The question of liability as  
4 between the trust estate and the trustee personally may be  
5 determined in a proceeding under [section 179].

6 NEW SECTION. Section 210. Protection of third person  
7 dealing with trustee. With respect to a third person dealing  
8 with a trustee or assisting a trustee in the conduct of a  
9 transaction, if the third person acts for a valuable  
10 consideration and without actual knowledge that the trustee  
11 is exceeding the trustee's powers or improperly exercising  
12 them:

13 (1) the third person is not bound to inquire whether  
14 the trustee has power to act or is properly exercising a  
15 power and may assume without inquiry the existence of a  
16 trust power and its proper exercise; and

17 (2) the third person is fully protected in dealing  
18 with or assisting the trustee just as if the trustee has and  
19 is properly exercising the power the trustee purports to  
20 exercise.

21 NEW SECTION. Section 211. Application of property  
22 delivered to trustee by third person. A third person is not  
23 bound to ensure the proper application of trust property  
24 paid or delivered to the trustee.

25 NEW SECTION. Section 212. Protection of third person

1 dealing with former trustee. If a third person acting for a  
2 valuable consideration enters into a transaction with a  
3 former trustee without knowledge that the person is no  
4 longer a trustee, the third person is fully protected just  
5 as if the former trustee were still a trustee.

6 NEW SECTION. Section 213. Effects on real property  
7 transactions. (1) This section relates only to conveyances  
8 of real property to or from a trust, and supplements, but  
9 does not modify other substantive provisions of [sections 1  
10 through 215] relating to the creation or validity of trusts.  
11 This section does not affect conveyances recorded prior to  
12 October 1, 1989.

13 (2) Except as otherwise provided in [sections 1  
14 through 215], a conveyance of real property to a trustee  
15 designated as such in the conveyance vests the whole estate  
16 conveyed in the trustee, subject only to the trustee's  
17 duties. The beneficiaries of the trust take no estate or  
18 interest in the real property, but may determine or enforce  
19 the terms of the trust as provided in [sections 1 through  
20 215].

21 (3) An instrument creating or amending a trust need  
22 not be recorded, but may be if properly acknowledged.

23 (4) If there is no clear reference to or designation  
24 of a grantee as trustee in a conveyance (nor in a separately  
25 recorded instrument recorded in the same county as the

1 conveyance and describing the same property as described in  
 2 the conveyance), the conveyance shall be considered to be  
 3 absolute to the grantee, in favor of purchasers or  
 4 encumbrancers from the grantee, who were without actual  
 5 knowledge and who acted for a valuable consideration,  
 6 despite any valid trust which may exist.

7 (5) Unless limitations upon a trustee's power or  
 8 authority are set forth in the recorded conveyance of real  
 9 property to the trustee or in a separate trust instrument  
 10 (or portion thereof, or abstract thereof) recorded in the  
 11 same county, there are no limitations upon the trustee's  
 12 power or authority to convey or encumber the real property  
 13 in favor of third persons who were without actual knowledge  
 14 and who acted for a valuable consideration. A separate trust  
 15 instrument incorporated by reference in a conveyance to a  
 16 trustee cannot limit the trustee's power or authority to  
 17 convey or encumber unless the limitations are set forth in  
 18 the trust instrument (or portion thereof or abstract  
 19 thereof) which is also recorded in the county where the real  
 20 property is located. An amendment to a recorded trust  
 21 instrument may not affect the power or authority of a  
 22 trustee to convey or encumber unless it is also recorded in  
 23 the same place.

24 (6) A subsequent conveyance from a person designated  
 25 in the original conveyance as trustee (or from his successor

1 trustee) conveys the whole estate vested in the trustee,  
 2 except as limited by the terms of the conveyance. The  
 3 identity of any successor trustee may be established by a  
 4 recorded affidavit of the successor trustee specifying his  
 5 name and address and the date and circumstances of his  
 6 succession, and confirming that he is currently lawfully  
 7 serving in such capacity.

8 (7) In an action or proceeding by a third person  
 9 involving the real property granted to a trustee, the person  
 10 designated as trustee in the original conveyance, or the  
 11 successor trustee as established in subsection (6), or, if  
 12 none, the person then actually serving as trustee, or, if  
 13 none, any beneficiary designated by the court to represent  
 14 the interests of the beneficiaries, shall be considered the  
 15 only necessary representative of the trust and of all  
 16 persons with an interest therein. A judgment is binding upon  
 17 and conclusive against the trust and all persons interested  
 18 therein as to all matters finally adjudicated in the  
 19 judgment.

20 NEW SECTION. **Section 214.** Creditor's rights against  
 21 revocable trust during trustor's lifetime. If the trustor  
 22 retains the power to revoke the trust in whole or in part,  
 23 the trust property is subject to the claims of creditors of  
 24 the trustor to the extent of the power of revocation during  
 25 the lifetime of the trustor.

**NEW SECTION. Section 215.** Creditor's rights against revocable trust after trustor's death. Upon the death of a trustor who had retained the power to revoke the trust in whole or in part, the property that was subject to the power of revocation at the time of the trustor's death is subject to the claims of creditors of the decedent trustor's estate and to the expenses of administration of the estate to the extent that the decedent trustor's estate is inadequate to satisfy those claims and expenses.

**Section 216.** Section 2-2-103, MCA, is amended to read:

**"2-2-103. Public trust.** (1) The holding of public office or employment is a public trust, created by the confidence which the electorate reposes in the integrity of public officers, legislators, and employees. A public officer, legislator, or employee shall carry out his duties for the benefit of the people of the state.

(2) A public officer, legislator, or employee whose conduct departs from his fiduciary duty is liable to the people of the state as a trustee of property, is liable to a beneficiary under ~~72-20-203(2)~~ [section 77], and shall suffer such other liabilities as a private fiduciary would suffer for abuse of his trust. The county attorney of the county where the trust is violated may bring appropriate judicial proceedings on behalf of the people. Any moneys collected in such actions shall be paid to the general fund

of the aggrieved agency.

(3) The following sections set forth various rules of conduct, the transgression of any of which is, as such, a violation of fiduciary duty, and various ethical principles, the transgression of any of which is not, as such, a violation of fiduciary duty."

**Section 217.** Section 31-2-209, MCA, is amended to read:

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

(1) if it gives a preference dependent upon any condition or contingency or with any power of revocation reserved;

(2) if it tends to coerce any creditor to release or compromise his demand;

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

(4) if it reserves any interest in the assigned property or in any part thereof to the assignor or for his benefit, before all existing debts are paid;

(5) if it confers upon the assignee any power which, if exercised, might prevent or delay the immediate



1 conversion of the assigned property to the purposes of the  
2 trust;

3 (6) if it exempts him from liability for neglect of  
4 duty or misconduct;

5 (7) if it violates ~~72-20-203~~ [section 77]."

6 **Section 218.** Section 70-20-101, MCA, is amended to  
7 read:

8 "70-20-101. Transfer to be in writing -- statute of  
9 frauds. No estate or interest in real property, other than  
10 an estate at will or for a term not exceeding 1 year, ~~or any~~  
11 ~~trust-over-or-power-concerning-it-or-in-any-manner--relating~~  
12 ~~thereto~~ can be created, granted, assigned, surrendered, or  
13 declared otherwise than by operation of law or a conveyance  
14 or other instrument in writing, subscribed by the party  
15 creating, granting, assigning, surrendering, or declaring it  
16 or by his lawful agent thereunto authorized by writing."

17 **Section 219.** Section 82-1-304, MCA, is amended to  
18 read:

19 "82-1-304. Administration of the trust. (1) The  
20 administration of the trust shall comply with the  
21 appropriate provisions regulating trusts contained in Title  
22 72.

23 (2) No trustee or attorney fees may be paid from the  
24 trust proceeds.

25 (3) All bonuses, rental payments, royalties, and other

1 income shall be paid to the trustee until the trust is  
2 terminated and notice of its termination given to all  
3 interested parties. The trustee shall distribute all money  
4 held in the trust to the person or persons entitled to it  
5 upon the order of the district court.

6 (4) A trust in favor of unlocatable owners shall be in  
7 force until the unlocatable owners of the mineral interest  
8 in question have successfully claimed the share of funds  
9 held in trust and filed the notice provided in 82-1-306.

10 (5) The trustee shall invest funds under his  
11 management in the manner of a prudent man, as defined--in  
12 ~~72-21-104~~ provided in [section 89]. Fifty percent of the  
13 interest earned on each trust shall be credited to the  
14 general fund of the county in which the mineral interest is  
15 located to defray the costs of administration.

16 (6) Funds held in the trusts are subject to the  
17 provisions governing abandoned property contained in Title  
18 70, chapter 9."

19 NEW SECTION. **Section 220.** Repealer. Sections  
20 72-12-101 through 72-12-103, Title 72, chapters 20 through  
21 25, sections 72-27-101 and 72-27-102, MCA, are repealed.

22 NEW SECTION. **Section 221.** Codification instruction.  
23 [Sections 1 through 215] are intended to be codified as an  
24 integral part of Title 72 and the provisions of Title 72  
25 apply to [sections 1 through 215].

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-End-