

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.

1
2 INTRODUCED BY Reps Agate Negus BILL NO. 333
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.

1 **NEW SECTION. Section 9. Methods of creating trust.**
 2 Subject to other provisions of [sections 1 through 72], a
 3 trust may be created by any of the following methods:
 4 (1) a declaration by the owner of property that the
 5 owner holds the property as trustee;
 6 (2) a transfer of property by the owner during the
 7 owner's lifetime to another person as trustee;
 8 (3) a testamentary transfer of property by the owner
 9 to another person as trustee;
 10 (4) an exercise of a power of appointment to another
 11 person as trustee; or
 12 (5) an enforceable promise to create a trust.

13 **NEW SECTION. Section 10. Intention to create trust.**
 14 A trust is created only if the trustor properly manifests an
 15 intention to create a trust.
 16 **NEW SECTION. Section 11. Trust property.** (1) A trust
 17 is created only if there is trust property.
 18 (2) The requirement of subsection (1) may be satisfied
 19 if the trust (or its trustee) is designated to be
 20 beneficiary of the proceeds of an insurance contract, an
 21 annuity contract, an employee benefit plan, an individual
 22 retirement account, or similar device, even though the
 23 designation may be revoked.
 24 **NEW SECTION. Section 12. Trust purpose.** A trust may
 25 be created for any purpose that is not illegal or against

1 public policy.
 2 **NEW SECTION. Section 13. Trust for indefinite or**
 3 **general purposes.** A trust created for an indefinite or
 4 general purpose is not invalid for that reason if it can be
 5 determined with reasonable certainty that a particular use
 6 of the trust property comes within that purpose.
 7 **NEW SECTION. Section 14. Designation of beneficiary.**
 8 (1) A trust, other than a charitable trust, is created only
 9 if there is a beneficiary.
 10 (2) The requirement of subsection (1) is satisfied if
 11 the trust instrument provides for either of the following:
 12 (a) a beneficiary or class of beneficiaries that is
 13 ascertainable with reasonable certainty or that is
 14 sufficiently described so it can be determined that some
 15 person meets the description or is within the class; or
 16 (b) a grant of power to the trustee or some other
 17 person to select the beneficiaries based on a standard or in
 18 the discretion of the trustee or other person.
 19 **NEW SECTION. Section 15. Designation of trust or**
 20 **trustee as beneficiary.** (1) A trust or trustee may be
 21 designated as the beneficiary of the proceeds of an
 22 insurance contract, an annuity contract, an employee benefit
 23 plan, an individual retirement account, or similar device if
 24 the designation is made in accordance with the contract,
 25 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:

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.

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"

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(l)(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;

1 (2) dedicate land to public use;
 2 (3) make or obtain the vacation of plats and adjust
 3 boundaries;
 4 (4) adjust differences in valuation on exchange or
 5 partition by giving or receiving consideration; or
 6 (5) dedicate easements to public use without
 7 consideration.

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

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

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

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

1 any membership in a nonprofit corporation, or any other
 2 property, a trustee has the power to do any of the
 3 following:
 4 (1) vote in person and give proxies to exercise any
 5 voting rights with respect to the shares, memberships, or
 6 property;
 7 (2) waive notice of a meeting or give consent to the
 8 holding of a meeting; or
 9 (3) authorize, ratify, approve, or confirm any action
 10 that could be taken by shareholders, members, or property
 11 owners.

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

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

19 NEW SECTION. Section 126. Consent to change in form
 20 of business -- voting trusts. The trustee has the power to
 21 consent, directly or through a committee or other agent, to
 22 the reorganization, consolidation, merger, dissolution, or
 23 liquidation of a corporation or other business enterprise,
 24 and to participate in voting trusts, pooling arrangements,
 25 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

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

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

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

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

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

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

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

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

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

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

24 (2) This section does not apply to timber, water,
 25 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(l)(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 out of income to the extent permitted by
 5 subsection (1)(b) and by [section 146];

6 (d) any tax levied upon profit, gain, or other
 7 receipts allocated to principal, notwithstanding
 8 the 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;

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

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

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

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

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

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

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

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

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

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

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

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

23 (b) whenever the beneficiary at the time consent was
 24 given did not know of his rights and of the material facts
 25 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 affirmation. (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 affirmation 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 affirmation, 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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 (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 stage 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

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 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].

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 (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 72-20-203t2} [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~~tit~~ 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-

APPROVED BY COMMITTEE
ON JUDICIARY

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.

1 **NEW SECTION. Section 9. Methods of creating trust.**
 2 Subject to other provisions of [sections 1 through 72], a
 3 trust may be created by any of the following methods:

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

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

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

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

12 (5) an enforceable promise to create a trust.

13 **NEW SECTION. Section 10. Intention to create trust.**
 14 A trust is created only if the trustor properly manifests an
 15 intention to create a trust.

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

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

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

1 public policy.

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

7 **NEW SECTION. Section 14. Designation of beneficiary.**
 8 (1) A trust, other than a charitable trust, is created only
 9 if there is a beneficiary.

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

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

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

19 **NEW SECTION. Section 15. Designation of trust or**
 20 **trustee as beneficiary.** (1) A trust or trustee may be
 21 designated as the beneficiary of the proceeds of an
 22 insurance contract, an annuity contract, an employee benefit
 23 plan, an individual retirement account, or similar device if
 24 the designation is made in accordance with the contract,
 25 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:

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.

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"

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(l)(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;

1 (2) dedicate land to public use;
2 (3) make or obtain the vacation of plats and adjust
3 boundaries;
4 (4) adjust differences in valuation on exchange or
5 partition by giving or receiving consideration; or
6 (5) dedicate easements to public use without
7 consideration.

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

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

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

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

1 any membership in a nonprofit corporation, or any other
2 property, a trustee has the power to do any of the
3 following:
4 (1) vote in person and give proxies to exercise any
5 voting rights with respect to the shares, memberships, or
6 property;
7 (2) waive notice of a meeting or give consent to the
8 holding of a meeting; or
9 (3) authorize, ratify, approve, or confirm any action
10 that could be taken by shareholders, members, or property
11 owners.

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

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

19 NEW SECTION. Section 126. **Consent to change in form**
20 **of business -- voting trusts.** The trustee has the power to
21 consent, directly or through a committee or other agent, to
22 the reorganization, consolidation, merger, dissolution, or
23 liquidation of a corporation or other business enterprise,
24 and to participate in voting trusts, pooling arrangements,
25 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];

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

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

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

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

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

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

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

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

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

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

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

24 (2) This section does not apply to timber, water,
 25 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;

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

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

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

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

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

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

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

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

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

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

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

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

23 (b) whenever the beneficiary at the time consent was
 24 given did not know of his rights and of the material facts
 25 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 affirmation. (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 affirmation 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 affirmation, 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

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

3 (c) the affirmation was induced by improper conduct of
4 the trustee; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 (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

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 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].

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 (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

(F) HOUSE
551343CW.HBV
SB 333

1 SENATE BILL NO. 333
2 INTRODUCED BY MAUREK, 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."

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.

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.

1 **NEW SECTION. Section 9. Methods of creating trust.**
2 Subject to other provisions of [sections 1 through 72], a
3 trust may be created by any of the following methods:
4 (1) a declaration by the owner of property that the
5 owner holds the property as trustee;
6 (2) a transfer of property by the owner during the
7 owner's lifetime to another person as trustee;
8 (3) a testamentary transfer of property by the owner
9 to another person as trustee;
10 (4) an exercise of a power of appointment to another
11 person as trustee; or
12 (5) an enforceable promise to create a trust.

13 **NEW SECTION. Section 10. Intention to create trust.**
14 A trust is created only if the trustor properly manifests an
15 intention to create a trust.

16 **NEW SECTION. Section 11. Trust property.** (1) A trust
17 is created only if there is trust property.
18 (2) The requirement of subsection (1) may be satisfied
19 if the trust (or its trustee) is designated to be
20 beneficiary of the proceeds of an insurance contract, an
21 annuity contract, an employee benefit plan, an individual
22 retirement account, or similar device, even though the
23 designation may be revoked.

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

1 public policy.
2 **NEW SECTION. Section 13. Trust for indefinite or**
3 **general purposes.** A trust created for an indefinite or
4 general purpose is not invalid for that reason if it can be
5 determined with reasonable certainty that a particular use
6 of the trust property comes within that purpose.
7 **NEW SECTION. Section 14. Designation of beneficiary.**
8 (1) A trust, other than a charitable trust, is created only
9 if there is a beneficiary.
10 (2) The requirement of subsection (1) is satisfied if
11 the trust instrument provides for either of the following:
12 (a) a beneficiary or class of beneficiaries that is
13 ascertainable with reasonable certainty or that is
14 sufficiently described so it can be determined that some
15 person meets the description or is within the class; or
16 (b) a grant of power to the trustee or some other
17 person to select the beneficiaries based on a standard or in
18 the discretion of the trustee or other person.
19 **NEW SECTION. Section 15. Designation of trust or**
20 **trustee as beneficiary.** (1) A trust or trustee may be
21 designated as the beneficiary of the proceeds of an
22 insurance contract, an annuity contract, an employee benefit
23 plan, an individual retirement account, or similar device if
24 the designation is made in accordance with the contract,
25 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:

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:

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

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:

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.

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"

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--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 OF OR OTHER INTERESTS IN AN OPEN-END OR
 7 CLOSED-END MANAGEMENT TYPE INVESTMENT COMPANY OR INVESTMENT
 8 TURST 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.

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

20 (a) an insured commercial or savings bank;
 21 (b) an insured building and loan association; or
 22 (c) an insured credit union.

23 (2) A trustee may deposit trust funds as described in
 24 subsection (1) in a financial institution operated by, or
 25 that is an affiliate of, the trustee. For the purpose of

1 this subsection, "affiliate" means a corporation that
 2 directly or indirectly through one or more intermediaries
 3 controls, is controlled by, or is under common control with
 4 another domestic or foreign corporation.

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

10 (4) Nothing in this section prevents the trustee from
 11 holding an amount of trust property reasonably necessary for
 12 the orderly administration of the trust in the form of cash
 13 or in a checking account without interest.

14 NEW SECTION. Section 115. Acquisition and disposition
 15 of property. The trustee has the power to acquire or dispose
 16 of property, for cash or on credit, at public or private
 17 sale, or by exchange.

18 NEW SECTION. Section 116. Management of property. The
 19 trustee has the power to manage, control, divide, develop,
 20 improve, exchange, partition, change the character of, or
 21 abandon trust property or any interest therein.

22 NEW SECTION. Section 117. Encumbrances. The trustee
 23 has the power to encumber, mortgage, or pledge trust
 24 property for a term within or extending beyond the term of
 25 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**

1 assessments. The trustee has the power to pay calls,
 2 assessments, and any other sums chargeable or accruing
 3 against or on account of securities.

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

7 NEW SECTION. **Section 126.** Consent to change in form
 8 of business -- voting trusts. The trustee has the power to
 9 consent, directly or through a committee or other agent, to
 10 the reorganization, consolidation, merger, dissolution, or
 11 liquidation of a corporation or other business enterprise,
 12 and to participate in voting trusts, pooling arrangements,
 13 and foreclosures, and in connection therewith, to deposit
 14 securities with and transfer title and delegate discretions
 15 to any protective or other committee as the trustee may
 16 consider advisable.

17 NEW SECTION. **Section 127.** Holding securities in name
 18 of nominee. The trustee has the power to hold a security in
 19 the name of a nominee or in other form without disclosure of
 20 the trust so that title to the security may pass by
 21 delivery, but the trustee is liable for any act of the
 22 nominee in connection with the security so held.

23 NEW SECTION. **Section 128.** Insurance. The trustee has
 24 the power to insure the property of the trust against damage
 25 or loss and to insure the trustee against liability with

1 respect to third persons.

2 NEW SECTION. **Section 129.** Borrowing money. The
 3 trustee has the power to borrow money for any trust purpose
 4 to be repaid from trust property.

5 NEW SECTION. **Section 130.** Payment and settlement of
 6 claims. The trustee has the power to do any of the
 7 following:
 8 (1) pay or contest any claim;
 9 (2) settle a claim by or against the trust by
 10 compromise, arbitration, or otherwise; or
 11 (3) release, in whole or in part, any claim belonging
 12 to the trust.

13 NEW SECTION. **Section 131.** Payment of taxes, trustee's
 14 compensation, and other expenses. The trustee has the power
 15 to pay taxes, assessments, reasonable compensation of the
 16 trustee and of employees and agents of the trust, and other
 17 expenses incurred in the collection, care, administration,
 18 and protection of the trust.

19 NEW SECTION. **Section 132.** Loans to beneficiary. The
 20 trustee has the following powers:

21 (1) to make loans out of trust property to the
 22 beneficiary on terms and conditions that the trustee
 23 determines are fair and reasonable under the circumstances;
 24 and
 25 (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 [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 affirmation. (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

1 option reject or affirm, and the beneficiary affirms the
 2 transaction, the beneficiary may not thereafter reject it
 3 and hold the trustee liable for any loss occurring after the
 4 trustee entered into the transaction.

5 (2) The affirmation of a transaction by the beneficiary
 6 does not preclude the beneficiary from holding a trustee
 7 liable for a breach of trust if, at the time of the
 8 affirmation, any of the following circumstances existed:

9 (a) the beneficiary was under an incapacity;
 10 (b) the beneficiary did not know of his rights and of
 11 the material facts:

12 (i) that the trustee knew or reasonably should have
 13 known; and

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

16 (c) the affirmation was induced by improper conduct of
 17 the trustee; or

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

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

25 (2) The district court having jurisdiction over the

1 trust pursuant to [sections 1 through 215] has concurrent
 2 jurisdiction of the following:
 3 (a) actions and proceedings to determine the existence
 4 of trusts;
 5 (b) actions and proceedings by or against creditors or
 6 debtors of trusts; and
 7 (c) other actions and proceedings involving trustees
 8 and third persons.

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

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

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

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

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

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

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

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

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

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

1 (a) in the case of a living trust, the county where
 2 the principal place of administration of the trust is
 3 located; or
 4 (b) in the case of a testamentary trust, either the
 5 county where the decedent's estate is administered or where
 6 the principal place of administration of the trust is
 7 located.

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

12 (3) Except as otherwise provided in subsections (1)
 13 and (2), the proper county for commencement of a proceeding
 14 pursuant to [sections 1 through 215] is determined by the
 15 rules applicable to civil actions generally.

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

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

23 NEW SECTION. Section 173. Manner of mailing -- when
 24 mailing complete. (1) If a notice or other paper is required
 25 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~~27~~ [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 70-20-203{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)

(70A)

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"

continued

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And that this Conference Committee Report be adopted.

FOR THE SENATE

FOR THE HOUSE

Sen. Crippen, Chairman

Rep. Spaeth

Sen. Bishop

Rep. Addy

Sen. Mazurek

Rep. Mercer

ADOPT

REJECT

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.

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.

1 NEW SECTION. **Section 9.** Methods of creating trust.
 2 Subject to other provisions of [sections 1 through 72], a
 3 trust may be created by any of the following methods:
 4 (1) a declaration by the owner of property that the
 5 owner holds the property as trustee;
 6 (2) a transfer of property by the owner during the
 7 owner's lifetime to another person as trustee;
 8 (3) a testamentary transfer of property by the owner
 9 to another person as trustee;
 10 (4) an exercise of a power of appointment to another
 11 person as trustee; or
 12 (5) an enforceable promise to create a trust.

13 NEW SECTION. **Section 10.** Intention to create trust.
 14 A trust is created only if the trustor properly manifests an
 15 intention to create a trust.

16 NEW SECTION. **Section 11.** Trust property. (1) A trust
 17 is created only if there is trust property.
 18 (2) The requirement of subsection (1) may be satisfied
 19 if the trust (or its trustee) is designated to be
 20 beneficiary of the proceeds of an insurance contract, an
 21 annuity contract, an employee benefit plan, an individual
 22 retirement account, or similar device, even though the
 23 designation may be revoked.

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

1 public policy.
 2 NEW SECTION. **Section 13.** Trust for indefinite or
 3 general purposes. A trust created for an indefinite or
 4 general purpose is not invalid for that reason if it can be
 5 determined with reasonable certainty that a particular use
 6 of the trust property comes within that purpose.
 7 NEW SECTION. **Section 14.** Designation of beneficiary.
 8 (1) A trust, other than a charitable trust, is created only
 9 if there is a beneficiary.
 10 (2) The requirement of subsection (1) is satisfied if
 11 the trust instrument provides for either of the following:
 12 (a) a beneficiary or class of beneficiaries that is
 13 ascertainable with reasonable certainty or that is
 14 sufficiently described so it can be determined that some
 15 person meets the description or is within the class; or
 16 (b) a grant of power to the trustee or some other
 17 person to select the beneficiaries based on a standard or in
 18 the discretion of the trustee or other person.
 19 NEW SECTION. **Section 15.** Designation of trust or
 20 trustee as beneficiary. (1) A trust or trustee may be
 21 designated as the beneficiary of the proceeds of an
 22 insurance contract, an annuity contract, an employee benefit
 23 plan, an individual retirement account, or similar device if
 24 the designation is made in accordance with the contract,
 25 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:

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.

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"

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
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
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.

1 NEW SECTION. **Section 158.** Measure of liability for
 2 interest. If the trustee is liable for interest pursuant to
 3 [section 157], the trustee is liable for the greater of the
 4 following amounts:

5 (1) the amount of interest that accrues at the legal
 6 rate on judgments; or
 7 (2) the amount of interest actually received.

8 NEW SECTION. **Section 159.** Limitations on proceedings
 9 against trustee. (1) Unless a claim is previously barred by
 10 adjudication, consent, limitation, or otherwise:

11 (a) If a beneficiary has received an interim or final
 12 account in writing, or other written report, that adequately
 13 discloses the existence of a claim against the trustee for
 14 breach of trust, the claim is barred as to that beneficiary
 15 unless a proceeding to assert the claim is commenced within
 16 3 years after receipt of the account or report. An account
 17 or report adequately discloses existence of a claim if it
 18 provides sufficient information so that the beneficiary
 19 knows of the claim or reasonably should have inquired into
 20 the existence of the claim.

21 (b) If an interim or final account or other report
 22 does not adequately disclose the existence of a claim
 23 against the trustee for breach of trust, the claim is barred
 24 as to that beneficiary unless a proceeding to assert the
 25 claim is commenced within 3 years after the beneficiary

1 discovered, or reasonably should have discovered, the
 2 existence of the claim.

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

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

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

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

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

23 NEW SECTION. **Section 160.** Exculpation of trustee. (1)
 24 Except as provided in subsection (2), the trustee can be
 25 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 affirmation. (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 affirmation 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 affirmation, 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 affirmation 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 stage 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

1 petition. If a trustee or beneficiary has served and filed
2 either a notice of appearance, in person or by counsel,
3 directed to the petitioner or the petitioner's counsel in
4 connection with a particular petition and proceeding or a
5 written request for a copy of the petition, and has given an
6 address to which notice or a copy of the petition may be
7 mailed or delivered, the petitioner shall cause a copy of
8 the petition to be mailed to that person within 5 days after
9 service of the notice of appearance or receipt of the
10 request.

11 NEW SECTION. Section 185. Authority to make necessary
12 orders -- temporary trustee. The court in its discretion may
13 make any orders and take any other action necessary or
14 proper to dispose of the matters presented by the petition,
15 including appointment of a temporary trustee to administer
16 the trust in whole or in part.

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

20 (1) compelling the trustee to submit an account or
21 report acts as trustee to a beneficiary pursuant to [section
22 179(2)(g)];

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

25 (3) approving removal of a testamentary trust from

1 continuing court jurisdiction pursuant to [section
2 179(2)(r)].

3 NEW SECTION. Section 187. Appointment of guardian ad
4 litem. (1) The court may, on its own motion or on request of
5 a trustee or other person interested in the trust, appoint a
6 guardian ad litem at any stage of a proceeding concerning
7 the trust to represent the interest of any of the following
8 persons, if the court determines that representation of the
9 interest otherwise would be inadequate:

10 (a) a minor;
11 (b) an incapacitated person;
12 (c) an unborn person;
13 (d) an unascertained person;
14 (e) a person whose identity or address is unknown; or
15 (f) a designated class of persons who are not
16 ascertained or are not in being.

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

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

24 (4) If no guardian ad litem is appointed, an unborn
25 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

1 jurisdiction and the amount of fiduciary bond, if any. If
 2 the trustee is an individual, the statement shall include
 3 the trustee's age;

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

8 (6) the name of the court, if any, having jurisdiction
 9 of the trustee in the other jurisdiction or of its accounts
 10 or in which a proceeding may be had with respect to
 11 administration of the trust or the trustee's accounts;

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

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

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

18 NEW SECTION. Section 193. 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 194. Order granting transfer.
 3 The court may, in its discretion, grant the petition and
 4 order the trustee to transfer the trust property or to
 5 transfer the place of administration of the trust to the
 6 other jurisdiction if, after hearing, all of the following
 7 appear to the court:

8 (1) the transfer of the trust property to a trustee in
 9 another jurisdiction, or the transfer of the place of
 10 administration of the trust to another jurisdiction, will
 11 promote the best interests of the trust and those interested
 12 in it, taking into account the interest in the economical
 13 and convenient administration of the trust;

14 (2) the transfer will not violate the trust
 15 instrument; and

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

19 NEW SECTION. Section 195. Manner of transfer --
 20 discharge of trustee. If a transfer is ordered under this
 21 chapter, the court may direct the manner of transfer and
 22 impose terms and conditions as may be just, including, but
 23 not limited to, a requirement for the substitution of a
 24 successor trustee in any pending litigation in this state.
 25 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

1 property or the place of administration of a trust to this
 2 state, the court may issue a conditional order appointing a
 3 trustee to administer the trust in this state and indicating
 4 that transfer to this state will be accepted if transfer is
 5 approved by the proper court of the other jurisdiction.

6 NEW SECTION. Section 203. Administration of
 7 transferred trust. A trust transferred to this state
 8 pursuant to [sections 165 through 203] shall be administered
 9 in the same manner as a trust of that type created in this
 10 state.

11 NEW SECTION. Section 204. Personal liability of
 12 trustee to third persons on contracts. (1) Unless otherwise
 13 provided in the contract or in [sections 165 through 203],
 14 a trustee is not personally liable on a contract properly
 15 entered into in the trustee's fiduciary capacity in the
 16 course of administration of the trust unless the trustee
 17 fails to reveal the trustee's representative capacity or
 18 identify the trust in the contract.

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

22 NEW SECTION. Section 205. Personal liability of
 23 trustee arising from ownership or control of trust estate.
 24 A trustee is personally liable for obligations arising from
 25 ownership or control of trust property only if the trustee

1 is personally at fault.

2 NEW SECTION. Section 206. Personal liability of
 3 trustee for torts. A trustee is personally liable for torts
 4 committed in the course of administration of the trust only
 5 if the trustee is personally at fault.

6 NEW SECTION. Section 207. Liability of dissenting
 7 cotrustee to third persons. (1) A cotrustee who does not
 8 join in exercising a power held by three or more cotrustees
 9 is not liable to third persons for the consequences of the
 10 exercise of the power.

11 (2) A dissenting cotrustee who joins in an action at
 12 the direction of the majority cotrustees is not liable to
 13 third persons for the action if the dissenting cotrustee
 14 expresses the dissent in writing to any other cotrustee at
 15 or before the time the action is taken.

16 (3) This section does not excuse a cotrustee from
 17 liability for failure to discharge the cotrustee's duties as
 18 a trustee.

19 NEW SECTION. Section 208. Assertion of claims against
 20 trust. A claim based on a contract entered into by a trustee
 21 in the trustee's representative capacity, on an obligation
 22 arising from ownership or control of trust property, or on a
 23 tort committed in the course of administration of the trust
 24 may be asserted against the trust by proceeding against the
 25 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.

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

10 **Section 216.** Section 2-2-103, MCA, is amended to read:
 11 "2-2-103. Public trust. (1) The holding of public
 12 office or employment is a public trust, created by the
 13 confidence which the electorate reposes in the integrity of
 14 public officers, legislators, and employees. A public
 15 officer, legislator, or employee shall carry out his duties
 16 for the benefit of the people of the state.

17 (2) A public officer, legislator, or employee whose
 18 conduct departs from his fiduciary duty is liable to the
 19 people of the state as a trustee of property, is liable to a
 20 beneficiary under 72-20-203~~t27~~ [section 77], and shall
 21 suffer such other liabilities as a private fiduciary would
 22 suffer for abuse of his trust. The county attorney of the
 23 county where the trust is violated may bring appropriate
 24 judicial proceedings on behalf of the people. Any moneys
 25 collected in such actions shall be paid to the general fund

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

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

9 "31-2-209. Assignment -- when void. An assignment for
 10 the benefit of creditors is void against any creditor of the
 11 assignor not assenting thereto in the following cases:

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

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

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

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

24 (5) if it confers upon the assignee any power which,
 25 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~~ft~~ [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].

SB 0333/04

-End-

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