

By: Watson

To: Judiciary A

HOUSE BILL NO. 508

1 AN ACT ENTITLED THE "UNIFORM PRINCIPAL AND INCOME ACT"; TO  
 2 PROVIDE FOR THE REGULATION THE FIDUCIARY RELATIONSHIP BETWEEN A  
 3 TRUSTEE OF A TRUST AND THE PERSONAL REPRESENTATIVE OF A DECEDENT'S  
 4 ESTATE; TO MAKE CLEAR THAT THIS ACT IS A DEFAULT LAW THAT OPERATES  
 5 ONLY WHEN THE GOVERNING INSTRUMENT IS SILENT OR WHEN THERE IS NO  
 6 EXPRESS LANGUAGE IN THE TRUST INSTRUMENT, WILL OR OTHER APPLICABLE  
 7 DOCUMENT; TO SPECIFY THE FIDUCIARY OBLIGATION OF THE TRUSTEE OF A  
 8 TRUST TO SATISFY BOTH THE INTERESTS OF THE TRUST'S INCOME  
 9 BENEFICIARIES DURING THE LIFE OF THE TRUST AND THE INTERESTS OF  
 10 THE REMAINDER BENEFICIARIES AT THE TRUST'S TERMINATION; TO PROVIDE  
 11 THAT A PERSONAL REPRESENTATIVE MAY BE REQUIRED TO ALLOCATE NET  
 12 INCOME TO CERTAIN INDIVIDUALS DURING THE ADMINISTRATION OF THE  
 13 ESTATE AND TO ASSURE THAT CERTAIN EXPENSES ARE PAID OUT OF AN  
 14 APPROPRIATE CATEGORY OF INTERESTS BEFORE FINALLY DISTRIBUTING THE  
 15 ASSETS OF THE DECEDENT'S ESTATE TO THE HEIRS OR DEVISEES; TO  
 16 REQUIRE THE TRUSTEE AND THE PERSONAL REPRESENTATIVE TO SATISFY  
 17 THEIR OBLIGATIONS BY THE PROPER ALLOCATION OF ASSETS TO EITHER  
 18 PRINCIPAL OR INCOME; TO ESTABLISH RULES FOR DISTINGUISHING INCOME  
 19 FROM PRINCIPAL; TO REPEAL SECTIONS 91-17-1 THROUGH 91-17-31,  
 20 MISSISSIPPI CODE OF 1972, WHICH CONSTITUTE THE REVISED UNIFORM  
 21 PRINCIPAL AND INCOME LAW ENACTED IN 1967; AND FOR RELATED  
 22 PURPOSES.

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

24 SECTION 1. The following shall be codified as a new Chapter  
 25 18, in Title 91, Mississippi Code of 1972:

26 **ARTICLE 1.**

27 **DEFINITIONS AND FIDUCIARY DUTIES**

28 SECTION 101. Short title. This act may be cited as the  
 29 Uniform Principal and Income Act.

30 SECTION 102. Definitions. In this act:

31 (1) "Accounting period" means a calendar year unless another

32 twelve-month period is selected by a fiduciary. The term includes  
33 a portion of a calendar year or other twelve-month period that  
34 begins when an income interest begins or ends when an income  
35 interest ends.

36 (2) "Beneficiary" includes, in the case of a decedent's  
37 estate, an heir, legatee, and devisee and, in the case of a trust,  
38 an income beneficiary and a remainder beneficiary.

39 (3) "Fiduciary" means a personal representative or a  
40 trustee. The term includes an executor, administrator, successor  
41 personal representative, special administrator, and a person  
42 performing substantially the same function.

43 (4) "Income" means money or property that a fiduciary  
44 receives as current return from a principal asset. The term  
45 includes a portion of receipts from a sale, exchange, or  
46 liquidation of a principal asset, to the extent provided in  
47 Article 4.

48 (5) "Income beneficiary" means a person to whom net income  
49 of a trust is or may be payable.

50 (6) "Income interest" means the right of an income  
51 beneficiary to receive all or part of net income, whether the  
52 terms of the trust require it to be distributed or authorize it to  
53 be distributed in the trustee's discretion.

54 (7) "Mandatory income interest" means the right of an income  
55 beneficiary to receive net income that the terms of the trust  
56 require the fiduciary to distribute.

57 (8) "Net income" means the total receipts allocated to  
58 income during an accounting period minus the disbursements made  
59 from income during the period, plus or minus transfers under this  
60 act to or from income during the period.

61 (9) "Person" means an individual, corporation, business  
62 trust, estate, trust, partnership, limited liability company,

63 limited liability partnership, association, joint venture,  
64 government; governmental subdivision, agency, or instrumentality;  
65 public corporation; or any other legal or commercial entity.

66 (10) "Principal" means property held in trust for  
67 distribution to a remainder beneficiary when the trust terminates.

68 (11) "Remainder beneficiary" means a person entitled to  
69 receive principal when an income interest ends.

70 (12) "Terms of a trust" means the manifestation of the  
71 intent of a settlor or decedent with respect to the trust,  
72 expressed in a manner that admits of its proof in a judicial  
73 proceeding, whether by written or spoken words or by conduct.

74 (13) "Trustee" includes an original, additional or successor  
75 trustee, whether or not appointed or confirmed by a court.

76 SECTION 103. Fiduciary duties; general principles.

77 (a) In allocating receipts and disbursements to or between  
78 principal and income, and with respect to any matter within the  
79 scope of Articles 2 and 3, a fiduciary:

80 (1) Shall administer a trust or estate in accordance  
81 with the terms of the trust or the will, even if there is a  
82 different provision in this act;

83 (2) May administer a trust or estate by the exercise of  
84 a discretionary power of administration given to the fiduciary by  
85 the terms of the trust or the will, even if the exercise of the  
86 power produces a result different from a result required or  
87 permitted by this act;

88 (3) Shall administer a trust or estate in accordance  
89 with this act if the terms of the trust or the will do not contain  
90 a different provision or do not give the fiduciary a discretionary

91 power of administration; and

92 (4) Shall add a receipt or charge a disbursement to  
93 principal to the extent that the terms of the trust and this act  
94 do not provide a rule for allocating the receipt or disbursement  
95 to or between principal and income.

96 (b) In exercising the power to adjust under Section 104(a)  
97 or a discretionary power of administration regarding a matter  
98 within the scope of this act, whether granted by the terms of a  
99 trust, a will, or this act, a fiduciary shall administer a trust  
100 or estate impartially, based on what is fair and reasonable to all  
101 of the beneficiaries, except to the extent that the terms of the  
102 trust or the will clearly manifest an intention that the fiduciary  
103 shall or may favor one or more of the beneficiaries. A  
104 determination in accordance with this act is presumed to be fair  
105 and reasonable to all of the beneficiaries.

106 SECTION 104. Trustee's power to adjust.

107 (a) A trustee may adjust between principal and income to the  
108 extent the trustee considers necessary if the trustee invests and  
109 manages trust assets as a prudent investor, the terms of the trust  
110 describe the amount that may or must be distributed to a  
111 beneficiary by referring to the trust's income, and the trustee  
112 determines, after applying the rules in Section 103(a), that the  
113 trustee is unable to comply with Section 103(b).

114 (b) In deciding whether and to what extent to exercise the  
115 power conferred by subsection (a), a trustee shall consider all  
116 factors relevant to the trust and its beneficiaries, including the  
117 following factors to the extent they are relevant:

118 (1) The nature, purpose, and expected duration of the

119 trust;

120 (2) The intent of the settlor;

121 (3) The identity and circumstances of the  
122 beneficiaries;

123 (4) The needs for liquidity, regularity of income, and  
124 preservation and appreciation of capital;

125 (5) The assets held in the trust; the extent to which  
126 they consist of financial assets, interests in closely held  
127 enterprises, tangible and intangible personal property, or real  
128 property; the extent to which an asset is used by a beneficiary;  
129 and whether an asset was purchased by the trustee or received from  
130 the settlor;

131 (6) The net amount allocated to income under the other  
132 sections of this act and the increase or decrease in the value of  
133 the principal assets, which the trustee may estimate as to assets  
134 for which market values are not readily available;

135 (7) Whether and to what extent the terms of the trust  
136 give the trustee the power to invade principal or accumulate  
137 income or prohibit the trustee from invading principal or  
138 accumulating income, and the extent to which the trustee has  
139 exercised a power from time to time to invade principal or  
140 accumulate income;

141 (8) The actual and anticipated effect of economic  
142 conditions on principal and income and effects of inflation and  
143 deflation; and

144 (9) The anticipated tax consequences of an adjustment.

145 (c) A trustee may not make an adjustment:

146 (1) That diminishes the income interest in a trust that

147 requires all of the income to be paid at least annually to a  
148 surviving spouse and for which an estate tax or gift tax marital  
149 deduction would be allowed, in whole or in part, if the trustee  
150 did not have the power to make the adjustment;

151 (2) That reduces the actuarial value of the income  
152 interest in a trust to which a person transfers property with the  
153 intent to qualify for a gift tax exclusion;

154 (3) That changes the amount payable to a beneficiary as  
155 a fixed annuity or a fixed fraction of the value of the trust  
156 assets;

157 (4) From any amount that is permanently set aside for  
158 charitable purposes under a will or the terms of a trust unless  
159 both income and principal are so set aside;

160 (5) If possessing or exercising the power to make an  
161 adjustment causes an individual to be treated as the owner of all  
162 or part of the trust for income tax purposes, and the individual  
163 would not be treated as the owner if the trustee did not possess  
164 the power to make an adjustment;

165 (6) If possessing or exercising the power to make an  
166 adjustment causes all or part of the trust assets to be included  
167 for estate tax purposes in the estate of an individual who has the  
168 power to remove a trustee or appoint a trustee, or both, and the  
169 assets would not be included in the estate of the individual if  
170 the trustee did not possess the power to make an adjustment;

171 (7) If the trustee is a beneficiary of the trust; or

172 (8) If the trustee is not a beneficiary, but the  
173 adjustment would benefit the trustee directly or indirectly.

174 (d) If subsection (c)(5), (6), (7) or (8) applies to a

175 trustee and there is more than one (1) trustee, a cotrustee to  
176 whom the provision does not apply may make the adjustment unless  
177 the exercise of the power by the remaining trustee or trustees is  
178 not permitted by the terms of the trust.

179 (e) A trustee may release the entire power conferred by  
180 subsection (a) or may release only the power to adjust from income  
181 to principal or the power to adjust from principal to income if  
182 the trustee is uncertain about whether possessing or exercising  
183 the power will cause a result described in subsection (c)(1)  
184 through (6) or (c)(8) or if the trustee determines that possessing  
185 or exercising the power will or may deprive the trust of a tax  
186 benefit or impose a tax burden not described in subsection (c).  
187 The release may be permanent or for a specified period, including  
188 a period measured by the life of an individual.

189 (f) Terms of a trust that limit the power of a trustee to  
190 make an adjustment between principal and income do not affect the  
191 application of this section unless it is clear from the terms of  
192 the trust that the terms are intended to deny the trustee the  
193 power of adjustment conferred by subsection (a).

## 194 **ARTICLE 2.**

### 195 **DECEDENT'S ESTATE OR TERMINATING INCOME INTEREST**

196 SECTION 201. Determination and distribution of net income.

197 After a decedent dies, in the case of an estate, or after an  
198 income interest in a trust ends, the following rules apply:

199 (1) A fiduciary of an estate or of a terminating income  
200 interest shall determine the amount of net income and net  
201 principal receipts received from property specifically given to a  
202 beneficiary under the rules in Articles 3 through 5 which apply to

203 trustees and the rules in paragraph (5). The fiduciary shall  
204 distribute the net income and net principal receipts to the  
205 beneficiary who is to receive the specific property.

206 (2) A fiduciary shall determine the remaining net income of  
207 a decedent's estate or a terminating income interest under the  
208 rules in Articles 3 through 5 which apply to trustees and by:

209 (A) Including in net income all income from property  
210 used to discharge liabilities;

211 (B) Paying from income or principal, in the fiduciary's  
212 discretion, fees of attorneys, accountants and fiduciaries; court  
213 costs and other expenses of administration; and interest on death  
214 taxes, but the fiduciary may pay those expenses from income of  
215 property passing to a trust for which the fiduciary claims an  
216 estate tax marital or charitable deduction only to the extent that  
217 the payment of those expenses from income will not cause the  
218 reduction or loss of the deduction; and

219 (C) Paying from principal all other disbursements made  
220 or incurred in connection with the settlement of a decedent's  
221 estate or the winding up of a terminating income interest,  
222 including debts, funeral expenses, disposition of remains, family  
223 allowances, and death taxes and related penalties that are  
224 apportioned to the estate or terminating income interest by the  
225 will, the terms of the trust, or applicable law.

226 (3) A fiduciary shall distribute to a beneficiary who  
227 receives a pecuniary amount outright the interest or any other  
228 amount provided by the will, the terms of the trust, or applicable  
229 law from net income determined under paragraph (2) or from  
230 principal to the extent that net income is insufficient. If a

231 beneficiary is to receive a pecuniary amount outright from a trust  
232 after an income interest ends and no interest or other amount is  
233 provided for by the terms of the trust or applicable law, the  
234 fiduciary shall distribute the interest or other amount to which  
235 the beneficiary would be entitled under applicable law if the  
236 pecuniary amount were required to be paid under a will.

237 (4) A fiduciary shall distribute the net income remaining  
238 after distributions required by paragraph (3) in the manner  
239 described in Section 202 to all other beneficiaries, including a  
240 beneficiary who receives a pecuniary amount in trust, even if the  
241 beneficiary holds an unqualified power to withdraw assets from the  
242 trust or other presently exercisable general power of appointment  
243 over the trust.

244 (5) A fiduciary may not reduce principal or income receipts  
245 from property described in paragraph (1) because of a payment  
246 described in Section 501 or 502 to the extent that the will, the  
247 terms of the trust, or applicable law requires the fiduciary to  
248 make the payment from assets other than the property or to the  
249 extent that the fiduciary recovers or expects to recover the  
250 payment from a third party. The net income and principal receipts  
251 from the property are determined by including all of the amounts  
252 the fiduciary receives or pays with respect to the property,  
253 whether those amounts accrued or became due before, on, or after  
254 the date of a decedent's death or an income interest's terminating  
255 event, and by making a reasonable provision for amounts that the  
256 fiduciary believes the estate or terminating income interest may  
257 become obligated to pay after the property is distributed.

258 SECTION 202. Distribution to residuary and remainder

259 beneficiaries.

260 (a) Each beneficiary described in Section 201(4) is entitled  
261 to receive a portion of the net income equal to the beneficiary's  
262 fractional interest in undistributed principal assets, using  
263 values as of the distribution date. If a fiduciary makes more  
264 than one (1) distribution of assets to beneficiaries to whom this  
265 section applies, each beneficiary, including one who does not  
266 receive part of the distribution, is entitled, as of each  
267 distribution date, to the net income the fiduciary has received  
268 after the date of death or terminating event or earlier  
269 distribution date but has not distributed as of the current  
270 distribution date.

271 (b) In determining a beneficiary's share of net income, the  
272 following rules apply:

273 (1) The beneficiary is entitled to receive a portion of  
274 the net income equal to the beneficiary's fractional interest in  
275 the undistributed principal assets immediately before the  
276 distribution date, including assets that later may be sold to meet  
277 principal obligations.

278 (2) The beneficiary's fractional interest in the  
279 undistributed principal assets must be calculated without regard  
280 to property specifically given to a beneficiary and property  
281 required to pay pecuniary amounts not in trust.

282 (3) The beneficiary's fractional interest in the  
283 undistributed principal assets must be calculated on the basis of  
284 the aggregate value of those assets as of the distribution date  
285 without reducing the value by any unpaid principal obligation.

286 (4) The distribution date for purposes of this section

287 may be the date as of which the fiduciary calculates the value of  
288 the assets if that date is reasonably near the date on which  
289 assets are actually distributed.

290 (c) If a fiduciary does not distribute all of the collected  
291 but undistributed net income to each person as of a distribution  
292 date, the fiduciary shall maintain appropriate records showing the  
293 interest of each beneficiary in that net income.

294 (d) A trustee may apply the rules in this section, to the  
295 extent that the trustee considers it appropriate, to net gain or  
296 loss realized after the date of death or terminating event or  
297 earlier distribution date from the disposition of a principal  
298 asset if this section applies to the income from the asset.

299 **ARTICLE 3.**

300 **APPORTIONMENT AT BEGINNING AND END OF INCOME INTEREST**

301 SECTION 301. When right to income begins and ends.

302 (a) An income beneficiary is entitled to net income from the  
303 date on which the income interest begins. An income interest  
304 begins on the date specified in the terms of the trust or, if no  
305 date is specified, on the date an asset becomes subject to a trust  
306 or successive income interest.

307 (b) An asset becomes subject to a trust:

308 (1) On the date it is transferred to the trust in the  
309 case of an asset that is transferred to a trust during the  
310 transferor's life;

311 (2) On the date of a testator's death in the case of an  
312 asset that becomes subject to a trust by reason of a will, even if  
313 there is an intervening period of administration of the testator's  
314 estate; or

315           (3) On the date of an individual's death in the case of  
316 an asset that is transferred to a fiduciary by a third party  
317 because of the individual's death.

318           (c) An asset becomes subject to a successive income interest  
319 on the day after the preceding income interest ends, as determined  
320 under subsection (d), even if there is an intervening period of  
321 administration to wind up the preceding income interest.

322           (d) An income interest ends on the day before an income  
323 beneficiary dies or another terminating event occurs, or on the  
324 last day of a period during which there is no beneficiary to whom  
325 a trustee may distribute income.

326           SECTION 302. Apportionment of receipts and disbursements  
327 when decedent dies or income interest begins.

328           (a) A trustee shall allocate an income receipt or  
329 disbursement other than one to which Section 201(1) applies to  
330 principal if its due date occurs before a decedent dies in the  
331 case of an estate or before an income interest begins in the case  
332 of a trust or successive income interest.

333           (b) A trustee shall allocate an income receipt or  
334 disbursement to income if its due date occurs on or after the date  
335 on which a decedent dies or an income interest begins and it is a  
336 periodic due date. An income receipt or disbursement must be  
337 treated as accruing from day to day if its due date is not  
338 periodic or it has no due date. The portion of the receipt or  
339 disbursement accruing before the date on which a decedent dies or  
340 an income interest begins must be allocated to principal and the  
341 balance must be allocated to income.

342           (c) An item of income or an obligation is due on the date

343 the payer is required to make a payment. If a payment date is not  
344 stated, there is no due date for the purposes of this act.  
345 Distributions to shareholders or other owners from an entity to  
346 which Section 401 applies are deemed to be due on the date fixed  
347 by the entity for determining who is entitled to receive the  
348 distribution or, if no date is fixed, on the declaration date for  
349 the distribution. A due date is periodic for receipts or  
350 disbursements that must be paid at regular intervals under a lease  
351 or an obligation to pay interest or if an entity customarily makes  
352 distributions at regular intervals.

353 SECTION 303. Apportionment when income interest ends.

354 (a) In this section, "undistributed income" means net income  
355 received before the date on which an income interest ends. The  
356 term does not include an item of income or expense that is due or  
357 accrued or net income that has been added or is required to be  
358 added to principal under the terms of the trust.

359 (b) When a mandatory income interest ends, the trustee shall  
360 pay to a mandatory income beneficiary who survives that date, or  
361 the estate of a deceased mandatory income beneficiary whose death  
362 causes the interest to end, the beneficiary's share of the  
363 undistributed income that is not disposed of under the terms of  
364 the trust unless the beneficiary has an unqualified power to  
365 revoke more than five percent (5%) of the trust immediately before  
366 the income interest ends. In the latter case, the undistributed  
367 income from the portion of the trust that may be revoked must be  
368 added to principal.

369 (c) When a trustee's obligation to pay a fixed annuity or a  
370 fixed fraction of the value of the trust's assets ends, the

371 trustee shall prorate the final payment if and to the extent  
372 required by applicable law to accomplish a purpose of the trust or  
373 its settlor relating to income, gift, estate, or other tax  
374 requirements.

375 **ARTICLE 4.**

376 **ALLOCATION OF RECEIPTS DURING ADMINISTRATION OF TRUST**

377 **PART 1. RECEIPTS FROM ENTITIES**

378 SECTION 401. Character of receipts.

379 (a) In this section, "entity" means a corporation,  
380 partnership, limited liability company, limited liability  
381 partnership, regulated investment company, real estate investment  
382 trust, common trust fund, or any other organization in which a  
383 trustee has an interest other than a trust or estate to which  
384 Section 402 applies, a business or activity to which Section 403  
385 applies, or an asset-backed security to which Section 415 applies.

386 (b) Except as otherwise provided in this section, a trustee  
387 shall allocate to income money received from an entity.

388 (c) A trustee shall allocate the following receipts from an  
389 entity to principal:

390 (1) Property other than money;

391 (2) Money received in one (1) distribution or a series  
392 of related distributions in exchange for part or all of a trust's  
393 interest in the entity;

394 (3) Money received in total or partial liquidation of  
395 the entity; and

396 (4) Money received from an entity that is a regulated  
397 investment company or a real estate investment trust if the money  
398 distributed is a capital gain dividend for federal income tax

399 purposes.

400 (d) Money is received in partial liquidation:

401 (1) To the extent that the entity, at or near the time  
402 of a distribution, indicates that it is a distribution in partial  
403 liquidation; or

404 (2) If the total amount of money and property received  
405 in a distribution or series of related distributions is greater  
406 than twenty percent (20%) of the entity's gross assets, as shown  
407 by the entity's year-end financial statements immediately  
408 preceding the initial receipt.

409 (e) Money is not received in partial liquidation, nor may it  
410 be taken into account under subsection (d)(2), to the extent that  
411 it does not exceed the amount of income tax that a trustee or  
412 beneficiary must pay on taxable income of the entity that  
413 distributes the money.

414 (f) A trustee may rely upon a statement made by an entity  
415 about the source or character of a distribution if the statement  
416 is made at or near the time of distribution by the entity's board  
417 of directors or other person or group of persons authorized to  
418 exercise powers to pay money or transfer property comparable to  
419 those of a corporation's board of directors.

420 SECTION 402. Distribution from trust or estate.

421 A trustee shall allocate to income an amount received as a  
422 distribution of income from a trust or an estate in which the  
423 trust has an interest other than a purchased interest, and shall  
424 allocate to principal an amount received as a distribution of  
425 principal from such a trust or estate. If a trustee purchases an  
426 interest in a trust that is an investment entity, or a decedent or

427 donor transfers an interest in such a trust to a trustee. Section  
428 401 or 415 applies to a receipt from the trust.

429 SECTION 403. Business and other activities conducted by  
430 trustee.

431 (a) If a trustee who conducts a business or other activity  
432 determines that it is in the best interest of all the  
433 beneficiaries to account separately for the business or activity  
434 instead of accounting for it as part of the trust's general  
435 accounting records, the trustee may maintain separate accounting  
436 records for its transactions, whether or not its assets are  
437 segregated from other trust assets.

438 (b) A trustee who accounts separately for a business or  
439 other activity may determine the extent to which its net cash  
440 receipts must be retained for working capital, the acquisition or  
441 replacement of fixed assets, and other reasonably foreseeable  
442 needs of the business or activity and the extent to which the  
443 remaining net cash receipts are accounted for as principal or  
444 income in the trust's general accounting records. If a trustee  
445 sells assets of the business or other activity, other than in the  
446 ordinary course of the business or activity, the trustee shall  
447 account for the net amount received as principal in the trust's  
448 general accounting records to the extent the trustee determines  
449 that the amount received is no longer required in the conduct of  
450 the business.

451 (c) Activities for which a trustee may maintain separate  
452 accounting records include:

453 (1) Retail, manufacturing, service and other  
454 traditional business activities;

- 455 (2) Farming;
- 456 (3) Raising and selling livestock and other animals;
- 457 (4) Management of rental properties;
- 458 (5) Extraction of minerals and other natural resources;
- 459 (6) Timber operations; and
- 460 (7) Activities to which Section 414 applies.

461 **PART 2. RECEIPTS NOT NORMALLY APPORTIONED.**

462 SECTION 404. Principal receipts. A trustee shall allocate  
463 to principal:

464 (1) To the extent not allocated to income under this act,  
465 assets received from a transferor during the transferor's  
466 lifetime, a decedent's estate, a trust with a terminating income  
467 interest, or a payer under a contract naming the trust or its  
468 trustee as beneficiary;

469 (2) Money or other property received from the sale,  
470 exchange, liquidation, or change in form of a principal asset,  
471 including realized profit, subject to this article;

472 (3) Amounts recovered from third parties to reimburse the  
473 trust because of disbursements described in Section 502(a)(7) or  
474 for other reasons to the extent not based on the loss of income;

475 (4) Proceeds of property taken by eminent domain, but a  
476 separate award made for the loss of income with respect to an  
477 accounting period during which a current income beneficiary had a  
478 mandatory income interest is income;

479 (5) Net income received in an accounting period during which  
480 there is no beneficiary to whom a trustee may or must distribute  
481 income; and

482 (6) Other receipts as provided in Part 3.

483 SECTION 405. Rental property.

484 To the extent that a trustee accounts for receipts from  
485 rental property pursuant to this section, the trustee shall  
486 allocate to income an amount received as rent of real or personal  
487 property, including an amount received for cancellation or renewal  
488 of a lease. An amount received as a refundable deposit, including  
489 a security deposit or a deposit that is to be applied as rent for  
490 future periods, must be added to principal and held subject to the  
491 terms of the lease and is not available for distribution to a  
492 beneficiary until the trustee's contractual obligations have been  
493 satisfied with respect to that amount.

494 SECTION 406. Obligation to pay money.

495 (a) An amount received as interest, whether determined at a  
496 fixed, variable or floating rate, on an obligation to pay money to  
497 the trustee, including an amount received as consideration for  
498 prepaying principal, must be allocated to income without any  
499 provision for amortization of premium.

500 (b) A trustee shall allocate to principal an amount received  
501 from the sale, redemption or other disposition of an obligation to  
502 pay money to the trustee more than one (1) year after it is  
503 purchased or acquired by the trustee, including an obligation  
504 whose purchase price or value when it is acquired is less than its  
505 value at maturity. If the obligation matures within one (1) year  
506 after it is purchased or acquired by the trustee, an amount  
507 received in excess of its purchase price or its value when  
508 acquired by the trust must be allocated to income.

509 (c) This section does not apply to an obligation to which  
510 Section 409, 410, 411, 412, 414 or 415 applies.

511 SECTION 407. Insurance policies and similar contracts.

512 (a) Except as otherwise provided in subsection (b), a  
513 trustee shall allocate to principal the proceeds of a life  
514 insurance policy or other contract in which the trust or its  
515 trustee is named as beneficiary, including a contract that insures  
516 the trust or its trustee against loss for damage to, destruction  
517 of, or loss of title to a trust asset. The trustee shall allocate  
518 dividends on an insurance policy to income if the premiums on the  
519 policy are paid from income, and to principal if the premiums are  
520 paid from principal.

521 (b) A trustee shall allocate to income proceeds of a  
522 contract that insures the trustee against loss of occupancy or  
523 other use by an income beneficiary, loss of income, or, subject to  
524 Section 403, loss of profits from a business.

525 (c) This section does not apply to a contract to which  
526 Section 409 applies.

527 **PART 3. RECEIPTS NORMALLY APPORTIONED**

528 SECTION 408. Insubstantial allocations not required. If a  
529 trustee determines that an allocation between principal and income  
530 required by Section 409, 410, 411, 412, or 415 is insubstantial,  
531 the trustee may allocate the entire amount to principal unless one  
532 of the circumstances described in Section 104(c) applies to the  
533 allocation. This power may be exercised by a cotrustee in the  
534 circumstances described in Section 104(d) and may be released for  
535 the reasons and in the manner described in Section 104(e). An  
536 allocation is presumed to be insubstantial if:

537 (1) The amount of the allocation would increase or decrease  
538 net income in an accounting period, as determined before the

539 allocation, by less than ten percent (10%); or

540 (2) The value of the asset producing the receipt for which  
541 the allocation would be made is less than ten percent (10%) of the  
542 total value of the trust's assets at the beginning of the  
543 accounting period.

544 SECTION 409. Deferred compensation, annuities and similar  
545 payments.

546 (a) In this section, "payment" means a payment that a  
547 trustee may receive over a fixed number of years or during the  
548 life of one or more individuals because of services rendered or  
549 property transferred to the payer in exchange for future payments.  
550 The term includes a payment made in money or property from the  
551 payer's general assets or from a separate fund created by the  
552 payer, including a private or commercial annuity, an individual  
553 retirement account, and a pension, profit-sharing, stock-bonus, or  
554 stock-ownership plan.

555 (b) To the extent that a payment is characterized as  
556 interest or a dividend or a payment made in lieu of interest or a  
557 dividend, a trustee shall allocate it to income. The trustee  
558 shall allocate to principal the balance of the payment and any  
559 other payment received in the same accounting period that is not  
560 characterized as interest, a dividend or an equivalent payment.

561 (c) If no part of a payment is characterized as interest, a  
562 dividend or an equivalent payment, and all or part of the payment  
563 is required to be made, a trustee shall allocate to income ten  
564 percent (10%) of the part that is required to be made during the  
565 accounting period and the balance to principal. If no part of a  
566 payment is required to be made or the payment received is the

567 entire amount to which the trustee is entitled, the trustee shall  
568 allocate the entire payment to principal. For purposes of this  
569 subsection, a payment is not "required to be made" to the extent  
570 that it is made because the trustee exercises a right of  
571 withdrawal.

572 (d) If, to obtain an estate tax marital deduction for a  
573 trust, a trustee must allocate more of a payment to income than  
574 provided for by this section, the trustee shall allocate to income  
575 the additional amount necessary to obtain the marital deduction.

576 (e) This section does not apply to payments to which Section  
577 410 applies.

578 SECTION 410. Liquidating asset.

579 (a) In this section, "liquidating asset" means an asset  
580 whose value will diminish or terminate because the asset is  
581 expected to produce receipts for a period of limited duration.  
582 The term includes a leasehold, patent, copyright, royalty right  
583 and right to receive payments during a period of more than one (1)  
584 year under an arrangement that does not provide for the payment of  
585 interest on the unpaid balance. The term does not include a  
586 payment subject to Section 409, resources subject to Section 411,  
587 timber subject to Section 412, an activity subject to Section 414,  
588 an asset subject to Section 415, or any asset for which the  
589 trustee establishes a reserve for depreciation under Section 503.

590 (b) A trustee shall allocate to income ten percent (10%) of  
591 the receipts from a liquidating asset and the balance to  
592 principal.

593 SECTION 411. Minerals, water and other natural resources.

594 (a) To the extent that a trustee accounts for receipts from

595 an interest in minerals or other natural resources pursuant to  
596 this section, the trustee shall allocate them as follows:

597 (1) If received as nominal delay rental or nominal  
598 annual rent on a lease, a receipt must be allocated to income.

599 (2) If received from a production payment, a receipt  
600 must be allocated to income if and to the extent that the  
601 agreement creating the production payment provides a factor for  
602 interest or its equivalent. The balance must be allocated to  
603 principal.

604 (3) If an amount received as a royalty, shut-in-well  
605 payment, take-or-pay payment, bonus or delay rental is more than  
606 nominal, ninety percent (90%) must be allocated to principal and  
607 the balance to income.

608 (4) If an amount is received from a working interest or  
609 any other interest not provided for in paragraph (1), (2) or (3),  
610 ninety percent (90%) of the net amount received must be allocated  
611 to principal and the balance to income.

612 (b) An amount received on account of an interest in water  
613 that is renewable must be allocated to income. If the water is  
614 not renewable, ninety percent (90%) of the amount must be  
615 allocated to principal and the balance to income.

616 (c) This act applies whether or not a decedent or donor was  
617 extracting minerals, water or other natural resources before the  
618 interest became subject to the trust.

619 (d) If a trust owns an interest in minerals, water or other  
620 natural resources on the effective date of this act, the trustee  
621 may allocate receipts from the interest as provided in this act or  
622 in the manner used by the trustee before the effective date of

623 this act. If the trust acquires an interest in minerals, water or  
624 other natural resources after the effective date of this act, the  
625 trustee shall allocate receipts from the interest as provided in  
626 this act.

627 SECTION 412. Timber.

628 (a) To the extent that a trustee accounts for receipts from  
629 the sale of timber and related products pursuant to this section,  
630 the trustee shall allocate the net receipts:

631 (1) To income to the extent that the amount of timber  
632 removed from the land does not exceed the rate of growth of the  
633 timber during the accounting periods in which a beneficiary has a  
634 mandatory income interest;

635 (2) To principal to the extent that the amount of  
636 timber removed from the land exceeds the rate of growth of the  
637 timber or the net receipts are from the sale of standing timber;

638 (3) To or between income and principal if the net  
639 receipts are from the lease of timberland or from a contract to  
640 cut timber from land owned by a trust, by determining the amount  
641 of timber removed from the land under the lease or contract and  
642 applying the rules in paragraphs (1) and (2); or

643 (4) To principal to the extent that advance payments,  
644 bonuses and other payments are not allocated pursuant to paragraph  
645 (1), (2) or (3).

646 (b) In determining net receipts to be allocated pursuant to  
647 subsection (a), a trustee shall deduct and transfer to principal a  
648 reasonable amount for depletion.

649 (c) This act applies whether or not a decedent or transferor  
650 was harvesting timber from the property before it became subject

651 to the trust.

652 (d) If a trust owns an interest in timberland on the  
653 effective date of this act, the trustee may allocate net receipts  
654 from the sale of timber and related products as provided in this  
655 act or in the manner used by the trustee before the effective date  
656 of this act. If the trust acquires an interest in timberland  
657 after the effective date of this act, the trustee shall allocate  
658 net receipts from the sale of timber and related products as  
659 provided in this act.

660 SECTION 413. Property not productive of income.

661 (a) If a marital deduction is allowed for all or part of a  
662 trust whose assets consist substantially of property that does not  
663 provide the surviving spouse with sufficient income from or use of  
664 the trust assets, and if the amounts that the trustee transfers  
665 from principal to income under Section 104 and distributes to the  
666 spouse from principal pursuant to the terms of the trust are  
667 insufficient to provide the spouse with the beneficial enjoyment  
668 required to obtain the marital deduction, the spouse may require  
669 the trustee to make property productive of income, convert  
670 property within a reasonable time, or exercise the power conferred  
671 by Section 104(a). The trustee may decide which action or  
672 combination of actions to take.

673 (b) In cases not governed by subsection (a), proceeds from  
674 the sale or other disposition of an asset are principal without  
675 regard to the amount of income the asset produces during any  
676 accounting period.

677 SECTION 414. Derivatives and options.

678 (a) In this section, "derivative" means a contract or

679 financial instrument or a combination of contracts and financial  
680 instruments which gives a trust the right or obligation to  
681 participate in some or all changes in the price of a tangible or  
682 intangible asset or group of assets, or changes in a rate, an  
683 index of prices or rates, or other market indicator for an asset  
684 or a group of assets.

685 (b) To the extent that a trustee accounts for transactions  
686 in derivatives pursuant to this section, the trustee shall  
687 allocate to principal receipts from and disbursements made in  
688 connection with those transactions.

689 (c) If a trustee grants an option to buy property from the  
690 trust, whether or not the trust owns the property when the option  
691 is granted, grants an option that permits another person to sell  
692 property to the trust, or acquires an option to buy property for  
693 the trust or an option to sell an asset owned by the trust, and  
694 the trustee or other owner of the asset is required to deliver the  
695 asset if the option is exercised, an amount received for granting  
696 the option must be allocated to principal. An amount paid to  
697 acquire the option must be paid from principal. A gain or loss  
698 realized upon the exercise of an option, including an option  
699 granted to a settlor of the trust for services rendered, must be  
700 allocated to principal.

701 SECTION 415. Asset-backed securities.

702 (a) In this section, "asset-backed security" means an asset  
703 whose value is based upon the right it gives the owner to receive  
704 distributions from the proceeds of financial assets that provide  
705 collateral for the security. The term includes an asset that  
706 gives the owner the right to receive from the collateral financial

707 assets only the interest or other current return or only the  
708 proceeds other than interest or current return. The term does not  
709 include an asset to which Section 401 or 409 applies.

710 (b) If a trust receives a payment from interest or other  
711 current return and from other proceeds of the collateral financial  
712 assets, the trustee shall allocate to income the portion of the  
713 payment which the payer identifies as being from interest or other  
714 current return and shall allocate the balance of the payment to  
715 principal.

716 (c) If a trust receives one or more payments in exchange for  
717 the trust's entire interest in an asset-backed security in one (1)  
718 accounting period, the trustee shall allocate the payments to  
719 principal. If a payment is one of a series of payments that will  
720 result in the liquidation of the trust's interest in the security  
721 over more than one (1) accounting period, the trustee shall  
722 allocate ten percent (10%) of the payment to income and the  
723 balance to principal.

## 724 **ARTICLE 5.**

### 725 **ALLOCATION OF DISBURSEMENTS DURING ADMINISTRATION OF TRUST**

726 SECTION 501. Disbursements from income. A trustee shall  
727 make the following disbursements from income to the extent that  
728 they are not disbursements to which Section 201(2)(B) or (C)  
729 applies:

730 (1) One-half (1/2) of the regular compensation of the  
731 trustee and of any person providing investment advisory or  
732 custodial services to the trustee;

733 (2) One-half (1/2) of all expenses for accountings, judicial  
734 proceedings, or other matters that involve both the income and

735 remainder interests;

736 (3) All of the other ordinary expenses incurred in  
737 connection with the administration, management or preservation of  
738 trust property and the distribution of income, including interest,  
739 ordinary repairs, regularly recurring taxes assessed against  
740 principal, and expenses of a proceeding or other matter that  
741 concerns primarily the income interest; and

742 (4) Recurring premiums on insurance covering the loss of a  
743 principal asset or the loss of income from or use of the asset.

744 SECTION 502. Disbursements from principal.

745 (a) A trustee shall make the following disbursements from  
746 principal:

747 (1) The remaining one-half (1/2) of the disbursements  
748 described in Section 501(1) and (2);

749 (2) All of the trustee's compensation calculated on  
750 principal as a fee for acceptance, distribution, or termination,  
751 and disbursements made to prepare property for sale;

752 (3) Payments on the principal of a trust debt;

753 (4) Expenses of a proceeding that concerns primarily  
754 principal, including a proceeding to construe the trust or to  
755 protect the trust or its property;

756 (5) Premiums paid on a policy of insurance not  
757 described in Section 501(4) of which the trust is the owner and  
758 beneficiary;

759 (6) Estate, inheritance, and other transfer taxes,  
760 including penalties, apportioned to the trust; and

761 (7) Disbursements related to environmental matters,  
762 including reclamation, assessing environmental conditions,

763 remedying and removing environmental contamination, monitoring  
764 remedial activities and the release of substances, preventing  
765 future releases of substances, collecting amounts from persons  
766 liable or potentially liable for the costs of those activities,  
767 penalties imposed under environmental laws or regulations and  
768 other payments made to comply with those laws or regulations,  
769 statutory or common-law claims by third parties, and defending  
770 claims based on environmental matters.

771 (b) If a principal asset is encumbered with an obligation  
772 that requires income from that asset to be paid directly to the  
773 creditor, the trustee shall transfer from principal to income an  
774 amount equal to the income paid to the creditor in reduction of  
775 the principal balance of the obligation

776 SECTION 503. Transfers from income to principal for  
777 depreciation.

778 (a) In this section, "depreciation" means a reduction in  
779 value due to wear, tear, decay, corrosion or gradual obsolescence  
780 of a fixed asset having a useful life of more than one (1) year.

781 (b) A trustee may transfer to principal a reasonable amount  
782 of the net cash receipts from a principal asset that is subject to  
783 depreciation, but may not transfer any amount for depreciation:

784 (1) Of that portion of real property used or available  
785 for use by a beneficiary as a residence or of tangible personal  
786 property held or made available for the personal use or enjoyment  
787 of a beneficiary;

788 (2) During the administration of a decedent's estate;  
789 or

790 (3) Under this section if the trustee is accounting

791 under Section 403 for the business or activity in which the asset  
792 is used.

793 (c) An amount transferred to principal need not be held as a  
794 separate fund.

795 SECTION 504. Transfers from income to reimburse principal.

796 (a) If a trustee makes or expects to make a principal  
797 disbursement described in this section, the trustee may transfer  
798 an appropriate amount from income to principal in one or more  
799 accounting periods to reimburse principal or to provide a reserve  
800 for future principal disbursements.

801 (b) Principal disbursements to which subsection (a) applies  
802 include the following, but only to the extent that the trustee has  
803 not been and does not expect to be reimbursed by a third party:

804 (1) An amount chargeable to income but paid from  
805 principal because it is unusually large, including extraordinary  
806 repairs;

807 (2) A capital improvement to a principal asset, whether  
808 in the form of changes to an existing asset or the construction of  
809 a new asset, including special assessments;

810 (3) Disbursements made to prepare property for rental,  
811 including tenant allowances, leasehold improvements and broker's  
812 commissions;

813 (4) Periodic payments on an obligation secured by a  
814 principal asset to the extent that the amount transferred from  
815 income to principal for depreciation is less than the periodic  
816 payments; and

817 (5) Disbursements described in Section 502(a)(7).

818 (c) If the asset whose ownership gives rise to the

819 disbursements becomes subject to a successive income interest  
820 after an income interest ends, a trustee may continue to transfer  
821 amounts from income to principal as provided in subsection (a).

822 SECTION 505. Income taxes.

823 (a) A tax required to be paid by a trustee based on receipts  
824 allocated to income must be paid from income.

825 (b) A tax required to be paid by a trustee based on receipts  
826 allocated to principal must be paid from principal, even if the  
827 tax is called an income tax by the taxing authority.

828 (c) A tax required to be paid by a trustee on the trust's  
829 share of an entity's taxable income must be paid proportionately:

830 (1) From income to the extent that receipts from the  
831 entity are allocated to income; and

832 (2) From principal to the extent that:

833 (A) Receipts from the entity are allocated to  
834 principal; and

835 (B) The trust's share of the entity's taxable  
836 income exceeds the total receipts described in paragraphs (1) and  
837 (2)(A).

838 (d) For purposes of this section, receipts allocated to  
839 principal or income must be reduced by the amount distributed to a  
840 beneficiary from principal or income for which the trust receives  
841 a deduction in calculating the tax.

842 SECTION 506. Adjustments between principal and income  
843 because of taxes.

844 (a) A fiduciary may make adjustments between principal and  
845 income to offset the shifting of economic interests or tax  
846 benefits between income beneficiaries and remainder beneficiaries



875

**MISCELLANEOUS PROVISIONS**

876

SECTION 2. Sections 91-17-1, 91-17-3, 91-17-5, 91-17-7,

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91-17-9, 91-17-11, 91-17-13, 91-17-15, 91-17-17, 91-17-19,

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91-17-21, 91-17-23, 91-17-25, 91-17-27, 91-17-29 and 91-17-31,

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Mississippi Code of 1972, which constitute the revised uniform

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principal and income law, are repealed.

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SECTION 3. This act shall take effect and be in force from

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and after July 1, 2000. The provisions of this act apply to every

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trust or decedent's estate existing on the effective date of this

884

act, except as otherwise expressly provided in the will or terms

885

of the trust or in this act.