

By: Senator(s) Tindell, Gollott

To: Judiciary, Division A

SENATE BILL NO. 2727

1 AN ACT TO CREATE THE MISSISSIPPI UNIFORM TRUST CODE, TO BE
2 CODIFIED IN TITLE 91, CHAPTER 23, MISSISSIPPI CODE OF 1972, TO
3 PROVIDE FOR THE CREATION, ADMINISTRATION, MODIFICATION,
4 TERMINATION, AND VALIDITY OF TRUSTS; TO CREATE NEW SECTION
5 91-23-101, MISSISSIPPI CODE OF 1972, TO CREATE A SHORT TITLE; TO
6 CREATE NEW SECTION 91-23-102, MISSISSIPPI CODE OF 1972, TO
7 PRESCRIBE THE SCOPE OF THE ACT; TO CREATE NEW SECTION 91-23-103,
8 MISSISSIPPI CODE OF 1972, TO ENACT DEFINITIONS; TO CREATE NEW
9 SECTION 91-23-104, MISSISSIPPI CODE OF 1972, TO ENUMERATE THE
10 CIRCUMSTANCES CONSTITUTING "KNOWLEDGE"; TO CREATE NEW SECTION
11 91-23-105, MISSISSIPPI CODE OF 1972, TO CREATE DEFAULT AND
12 MANDATORY RULES; TO CREATE NEW SECTION 91-23-106, MISSISSIPPI CODE
13 OF 1972, TO PROVIDE FOR THE APPLICATION OF COMMON LAW AND
14 PRINCIPLES OF EQUITY; TO CREATE NEW SECTION 91-23-107, MISSISSIPPI
15 CODE OF 1972, TO PRESCRIBE GOVERNING LAW; TO CREATE NEW SECTION
16 91-23-108, MISSISSIPPI CODE OF 1972, TO DELINEATE THE PRINCIPAL
17 PLACE OF ADMINISTRATION; TO CREATE NEW SECTION 91-23-109,
18 MISSISSIPPI CODE OF 1972, TO PROVIDE FOR NOTICE AND WAIVER
19 THEREOF; TO CREATE NEW SECTION 91-23-110, MISSISSIPPI CODE OF
20 1972, TO SPECIFY QUALIFIED BENEFICIARIES; TO CREATE NEW SECTION
21 91-23-111, MISSISSIPPI CODE OF 1972, TO AUTHORIZE NONJUDICIAL
22 SETTLEMENT AGREEMENTS; TO CREATE NEW SECTION 91-23-112,
23 MISSISSIPPI CODE OF 1972, TO PROVIDE RULES OF CONSTRUCTION; TO
24 CREATE NEW SECTION 91-23-113, MISSISSIPPI CODE OF 1972, TO DEFINE
25 THE INSURABLE INTEREST OF A TRUSTEE; TO CREATE NEW SECTION
26 91-23-201, MISSISSIPPI CODE OF 1972, TO SPECIFY THE ROLE OF THE
27 COURT; TO CREATE NEW SECTION 91-23-202, MISSISSIPPI CODE OF 1972,
28 TO SPECIFY JURISDICTION; TO CREATE NEW SECTION 91-23-203,
29 MISSISSIPPI CODE OF 1972, TO DEFINE SUBJECT-MATTER JURISDICTION;
30 TO CREATE NEW SECTION 91-23-204, MISSISSIPPI CODE OF 1972, TO
31 PRESCRIBE VENUE; TO CREATE NEW SECTION 91-23-205, MISSISSIPPI CODE
32 OF 1972, TO PROVIDE FOR JUDICIAL ACCOUNTINGS AND SETTLEMENTS; TO
33 CREATE NEW SECTION 91-23-301, MISSISSIPPI CODE OF 1972, TO SPECIFY
34 WHEN REPRESENTATION IS BINDING; TO CREATE NEW SECTION 91-23-302,



35 MISSISSIPPI CODE OF 1972, TO PROVIDE WHEN THE HOLDER MAY BIND
36 OTHERS; TO CREATE NEW SECTION 91-23-303, MISSISSIPPI CODE OF 1972,
37 TO PROVIDE FOR REPRESENTATION BY FIDUCIARIES AND PARENTS; TO
38 CREATE NEW SECTION 91-23-304, MISSISSIPPI CODE OF 1972, TO PROVIDE
39 FOR REPRESENTATION BY PERSONS WITH SIMILAR INTERESTS; TO CREATE
40 NEW SECTION 91-23-305, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR
41 APPOINTMENT OF REPRESENTATIVES; TO CREATE NEW SECTION 91-23-401,
42 MISSISSIPPI CODE OF 1972, TO PROVIDE METHODS FOR CREATING TRUSTS;
43 TO CREATE NEW SECTION 91-23-402, MISSISSIPPI CODE OF 1972, TO
44 SPECIFY REQUIREMENTS; TO CREATE NEW SECTION 91-23-403, MISSISSIPPI
45 CODE OF 1972, TO PROVIDE FOR FOREIGN TRUSTS; TO CREATE NEW SECTION
46 91-23-404, MISSISSIPPI CODE OF 1972, TO REQUIRE A LAWFUL PURPOSE;
47 TO CREATE NEW SECTION 91-23-405, MISSISSIPPI CODE OF 1972, TO
48 ALLOW COURT-SELECTION OF A CHARITABLE PURPOSE; TO CREATE NEW
49 SECTION 91-23-406, MISSISSIPPI CODE OF 1972, TO VOID A TRUST
50 CREATED UNDER DURESS; TO CREATE NEW SECTION 91-23-407, MISSISSIPPI
51 CODE OF 1972, TO ALLOW AN ORAL TRUST; TO CREATE NEW SECTION
52 91-23-408, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR TRUSTS FOR
53 ANIMALS; TO CREATE NEW SECTION 91-23-409, MISSISSIPPI CODE OF
54 1972, TO PROVIDE FOR NONCHARITABLE TRUSTS LACKING A DISCERNABLE
55 BENEFICIARY; TO CREATE NEW SECTION 91-23-410, MISSISSIPPI CODE OF
56 1972, TO PROVIDE FOR MODIFICATION OR TERMINATION OF TRUSTS; TO
57 CREATE NEW SECTION 91-23-411, MISSISSIPPI CODE OF 1972, TO PROVIDE
58 FOR MODIFICATION OR TERMINATION OF NONCHARITABLE IRREVOCABLE
59 TRUSTS BY CONSENT; TO CREATE NEW SECTION 91-23-412, MISSISSIPPI
60 CODE OF 1972, TO PROVIDE FOR MODIFICATION OR TERMINATION DUE TO
61 UNFORESEEN CIRCUMSTANCES; TO CREATE NEW SECTION 91-23-413,
62 MISSISSIPPI CODE OF 1972, TO PROVIDE FOR INTERPRETATION ACCORDING
63 TO THE SETTLOR'S INTENT; TO CREATE NEW SECTION 91-23-414,
64 MISSISSIPPI CODE OF 1972, TO PROVIDE FOR MODIFICATION OR
65 TERMINATION OF AN UNECONOMIC TRUST; TO CREATE NEW SECTION
66 91-23-415, MISSISSIPPI CODE OF 1972, TO ALLOW REFORMATION TO
67 CORRECT MISTAKES; TO CREATE NEW SECTION 91-23-416, MISSISSIPPI
68 CODE OF 1972, TO ALLOW MODIFICATION TO OBTAIN TAX OBJECTIVES; TO
69 CREATE NEW SECTION 91-23-417, MISSISSIPPI CODE OF 1972, TO ALLOW
70 COMBINATION AND DIVISION OF TRUSTS; TO CREATE NEW SECTION
71 91-23-601, MISSISSIPPI CODE OF 1972, TO SPECIFY REQUIRED CAPACITY;
72 TO CREATE NEW SECTION 91-23-602, MISSISSIPPI CODE OF 1972, TO
73 PROVIDE FOR REVOCATION OR AMENDMENT OF REVOCABLE TRUST; TO CREATE
74 NEW SECTION 91-23-603, MISSISSIPPI CODE OF 1972, TO PROVIDE
75 SETTLOR'S POWERS; TO CREATE NEW SECTION 91-23-604, MISSISSIPPI
76 CODE OF 1972, TO PLACE A LIMITATION ON AN ACTION TO CONTEST
77 VALIDITY; TO CREATE NEW SECTION 91-23-701, MISSISSIPPI CODE OF
78 1972, TO ALLOW ACCEPTANCE OR DECLINE OF TRUSTEESHIP; TO CREATE NEW
79 SECTION 91-23-702, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR A
80 TRUSTEE'S BOND; TO CREATE NEW SECTION 91-23-703, MISSISSIPPI CODE
81 OF 1972, TO PROVIDE FOR COTRUSTEES; TO CREATE NEW SECTION
82 91-23-704, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR VACANCIES AND
83 APPOINTMENTS; TO CREATE NEW SECTION 91-23-705, MISSISSIPPI CODE OF
84 1972, TO PROVIDE FOR RESIGNATION OF TRUSTEES; TO CREATE NEW
85 SECTION 91-23-706, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR



86 REMOVAL OF A TRUSTEE; TO CREATE NEW SECTION 91-23-707, MISSISSIPPI
87 CODE OF 1972, TO PROVIDE FOR DELIVERY OF PROPERTY BY A FORMER
88 TRUSTEE; TO CREATE NEW SECTION 91-23-708, MISSISSIPPI CODE OF
89 1972, TO PROVIDE FOR THE COMPENSATION OF TRUSTEE, TRUST ADVISORS
90 AND TRUST PROTECTORS; TO CREATE NEW SECTION 91-23-709, MISSISSIPPI
91 CODE OF 1972, TO PROVIDE FOR REIMBURSEMENT; TO CREATE NEW SECTION
92 91-23-710, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR EXCLUDED
93 FIDUCIARIES OF DIRECTED TRUSTS; TO CREATE NEW SECTION 91-23-711,
94 MISSISSIPPI CODE OF 1972, TO ALLOW A FIDUCIARY TO ACCEPT OR
95 DECLINE SERVING A DIRECTED TRUST; TO CREATE NEW SECTION 91-23-712,
96 MISSISSIPPI CODE OF 1972, TO PROVIDE THE FIDUCIARY'S BOND FOR A
97 DIRECTED TRUST; TO CREATE NEW SECTION 91-23-713, MISSISSIPPI CODE
98 OF 1972, TO PROVIDE FOR A VACANCY IN A DIRECTED TRUST; TO CREATE
99 NEW SECTION 91-23-714, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR
100 THE RESIGNATION OF THE FIDUCIARY OF A DIRECTED TRUST; TO CREATE
101 NEW SECTION 91-23-715, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR
102 THE REMOVAL OF A FIDUCIARY OF A DIRECTED TRUST; TO CREATE NEW
103 SECTION 91-23-801, MISSISSIPPI CODE OF 1972, TO SPECIFY THE DUTY
104 OF A TRUST ADMINISTRATOR; TO CREATE NEW SECTION 91-23-802,
105 MISSISSIPPI CODE OF 1972, TO REQUIRE THE DUTY OF LOYALTY; TO
106 CREATE NEW SECTION 91-23-803, MISSISSIPPI CODE OF 1972, TO REQUIRE
107 IMPARTIALITY; TO CREATE NEW SECTION 91-23-804, MISSISSIPPI CODE OF
108 1972, TO REQUIRE PRUDENCE; TO CREATE NEW SECTION 91-23-805,
109 MISSISSIPPI CODE OF 1972, TO PROVIDE FOR PAYMENT OF COSTS; TO
110 CREATE NEW SECTION 91-23-806, MISSISSIPPI CODE OF 1972, TO REQUIRE
111 THE TRUSTEE'S USE OF SPECIAL SKILLS; TO CREATE NEW SECTION
112 91-23-807, MISSISSIPPI CODE OF 1972, TO ALLOW DELEGATION BY A
113 TRUSTEE; TO CREATE NEW SECTION 91-23-808, MISSISSIPPI CODE OF
114 1972, TO SPECIFY WHEN A SETTLOR HAS THE POWER TO DIRECT; TO CREATE
115 NEW SECTION 91-23-809, MISSISSIPPI CODE OF 1972, TO REQUIRE
116 CONTROL AND PROTECTION OF TRUST PROPERTY; TO CREATE NEW SECTION
117 91-23-810, MISSISSIPPI CODE OF 1972, TO REQUIRE RECORDKEEPING AND
118 IDENTIFICATION OF TRUST PROPERTY; TO CREATE NEW SECTION 91-23-811,
119 MISSISSIPPI CODE OF 1972, TO PROVIDE FOR ENFORCEMENT AND DEFENSE
120 OF CLAIMS; TO CREATE NEW SECTION 91-23-812, MISSISSIPPI CODE OF
121 1972, TO REQUIRE COLLECTION OF PROPERTY; TO CREATE NEW SECTION
122 91-23-813, MISSISSIPPI CODE OF 1972, TO IMPOSE A DUTY TO INFORM
123 AND REPORT; TO CREATE NEW SECTION 91-23-814, MISSISSIPPI CODE OF
124 1972, TO IMPOSE STANDARDS ON THE EXERCISE OF DISCRETIONARY POWERS;
125 TO CREATE NEW SECTION 91-23-815, MISSISSIPPI CODE OF 1972, TO
126 SPECIFY THE GENERAL POWERS OF A TRUSTEE; TO CREATE NEW SECTION
127 91-23-816, MISSISSIPPI CODE OF 1972, TO SPECIFY THE SPECIFIC
128 POWERS OF A TRUSTEE; TO CREATE NEW SECTION 91-23-817, MISSISSIPPI
129 CODE OF 1972, TO PROVIDE FOR DISTRIBUTION UPON TERMINATION; TO
130 CREATE NEW SECTION 91-23-901, MISSISSIPPI CODE OF 1972, TO
131 INCORPORATE THE PRUDENT INVESTOR ACT BY REFERENCE; TO CREATE NEW
132 SECTION 91-23-1001, MISSISSIPPI CODE OF 1972, TO PROVIDE REMEDIES
133 FOR BREACH OF TRUST; TO CREATE NEW SECTION 91-23-1002, MISSISSIPPI
134 CODE OF 1972, TO PROVIDE DAMAGES FOR BREACH OF TRUST; TO CREATE
135 NEW SECTION 91-23-1003, MISSISSIPPI CODE OF 1972, TO ELIMINATE
136 DAMAGES IN ABSENCE OF BREACH; TO CREATE NEW SECTION 91-23-1004,



137 MISSISSIPPI CODE OF 1972, TO PROVIDE FOR ATTORNEY'S FEES AND
138 COSTS; TO CREATE NEW SECTION 91-23-1005, MISSISSIPPI CODE OF 1972,
139 TO ENACT A LIMITATION OF ACTION AGAINST A TRUSTEE; TO CREATE NEW
140 SECTION 91-23-1006, MISSISSIPPI CODE OF 1972, TO CREATE IMMUNITY
141 FOR RELIANCE ON THE TRUST INSTRUMENT; TO CREATE NEW SECTION
142 91-23-1007, MISSISSIPPI CODE OF 1972, TO CREATE IMMUNITY FOR
143 CERTAIN OTHER EVENTS AFFECTING ADMINISTRATION; TO CREATE NEW
144 SECTION 91-23-1008, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR A
145 TRUSTEE'S EXCULPATION; TO CREATE NEW SECTION 91-23-1009,
146 MISSISSIPPI CODE OF 1972, TO PROVIDE FOR A BENEFICIARY'S CONSENT,
147 RELEASE OR RATIFICATION; TO CREATE NEW SECTION 91-23-1010,
148 MISSISSIPPI CODE OF 1972, TO LIMIT A TRUSTEE'S PERSONAL LIABILITY;
149 TO CREATE NEW SECTION 91-23-1011, MISSISSIPPI CODE OF 1972, TO
150 SPECIFY A TRUSTEE'S INTEREST AS A GENERAL PARTNER; TO CREATE NEW
151 SECTION 91-23-1012, MISSISSIPPI CODE OF 1972, TO PROVIDE
152 PROTECTION FOR A PERSON DEALING WITH A TRUSTEE; TO CREATE NEW
153 SECTION 91-23-1013, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR
154 CERTIFICATION OF A TRUST; TO CREATE NEW SECTION 91-23-1014,
155 MISSISSIPPI CODE OF 1972, TO ALLOW ENFORCEMENT OF A NO-CONTEST
156 CLAUSE; TO CREATE NEW SECTION 91-23-1101, MISSISSIPPI CODE OF
157 1972, TO PROVIDE FOR UNIFORMITY IN APPLICATION AND CONSTRUCTION;
158 TO CREATE NEW SECTION 91-23-1102, MISSISSIPPI CODE OF 1972, TO
159 SPECIFY THE RELATION OF THE ACT TO THE ELECTRONIC SIGNATURES ACT;
160 TO CREATE NEW SECTION 91-23-1103, MISSISSIPPI CODE OF 1972, TO
161 PROVIDE FOR SEVERABILITY; TO CREATE NEW SECTION 91-23-1106,
162 MISSISSIPPI CODE OF 1972, TO MAKE TRANSITION PROVISIONS; TO CREATE
163 NEW SECTION 91-23-1107, MISSISSIPPI CODE OF 1972, TO PLACE
164 LIMITATIONS ON SETTLORS OF IRREVOCABLE TRUSTS; TO CREATE NEW
165 SECTION 91-23-1108, MISSISSIPPI CODE OF 1972, TO PROVIDE FACTORS
166 TO BE CONSIDERED IN CERTAIN CHALLENGES; TO CREATE NEW SECTION
167 91-23-1109, MISSISSIPPI CODE OF 1972, TO PROVIDE SPECIAL
168 PROTECTIONS FOR TRUSTS FOR THE DISABLED; TO CREATE NEW SECTION
169 91-23-1201, MISSISSIPPI CODE OF 1972, TO SPECIFY THE POWERS OF
170 TRUST ADVISORS AND TRUST PROTECTORS; TO CREATE NEW SECTION
171 91-23-1202, MISSISSIPPI CODE OF 1972, TO SPECIFY THE FIDUCIARY
172 DUTY OF TRUST ADVISORS AND TRUST PROTECTORS; TO CREATE NEW SECTION
173 91-23-1203, MISSISSIPPI CODE OF 1972, TO SUBJECT TRUST ADVISORS
174 AND PROTECTORS TO COURT JURISDICTION; TO CREATE NEW SECTION
175 91-23-1204, MISSISSIPPI CODE OF 1972, TO LIMIT THE DUTY OF REVIEW
176 OF AN EXCLUDED FIDUCIARY; TO CREATE NEW SECTION 91-23-1205,
177 MISSISSIPPI CODE OF 1972, TO SPECIFY THE FIDUCIARY'S LIABILITY; TO
178 CREATE NEW SECTION 91-23-1206, MISSISSIPPI CODE OF 1972, TO CREATE
179 A LIMITATION OF LIABILITY FOR A TRUST ADVISOR OR PROTECTOR; TO
180 REPEAL SECTIONS 91-9-1, 91-9-2, 91-9-3, 91-9-5, 91-9-7 AND 91-9-9,
181 MISSISSIPPI CODE OF 1972, WHICH CONSTITUTE TITLE 91, CHAPTER 9,
182 ARTICLE 1, TRUSTS - GENERAL PROVISIONS; TO REPEAL SECTIONS
183 91-9-101, 91-9-103, 91-9-105, 91-9-107, 91-9-109, 91-9-111,
184 91-9-113, 91-9-115, 91-9-117 AND 91-9-119, MISSISSIPPI CODE OF
185 1972, WHICH CONSTITUTE TITLE 91, CHAPTER 9, ARTICLE 3, UNIFORM
186 TRUSTEE POWERS; TO REPEAL SECTIONS 91-9-201, 91-9-203, 91-9-205,
187 91-9-207, 91-2-209, 91-9-211, 91-9-213, MISSISSIPPI CODE OF 1972,



188 WHICH CONSTITUTE TITLE 91, CHAPTER 9, ARTICLE 5, RESIGNATION AND
189 SUCCESSION OF TRUSTEES; TO REPEAL SECTIONS 91-9-301, 91-9-303 AND
190 91-9-305, MISSISSIPPI CODE OF 1972, WHICH CONSTITUTE TITLE 91,
191 CHAPTER 9, ARTICLE 7, REMOVAL OF TRUSTEES; AND FOR RELATED
192 PURPOSES.

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

194 **ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS**

195 **SECTION 1.** The following shall be codified as Section
196 91-23-101, Mississippi Code of 1972:

197 91-23-101. **Short title.** This chapter may be cited as the
198 Mississippi Uniform Trust Code.

199 **SECTION 2.** The following shall be codified as Section
200 91-23-102, Mississippi Code of 1972:

201 91-23-102. **Scope.** This chapter applies to express trusts,
202 charitable or noncharitable, and trusts created pursuant to a
203 statute, judgment, or decree that requires the trust to be
204 administered in the manner of an express trust.

205 **SECTION 3.** The following shall be codified as Section
206 91-23-103, Mississippi Code of 1972:

207 91-23-103. **Definitions.** In this chapter:

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

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



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

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

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

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

224 (5) "Beneficiary surrogate" means a person, other than a
225 trustee, designated by the settlor in the trust instrument or in a
226 writing delivered to the trustee, or designated by a trust
227 protector or trust advisor pursuant to the terms of the trust
228 instrument to receive notices, information, and reports otherwise
229 required to be provided to a beneficiary under Section
230 91-23-813(a) and (b).

231 (6) "Charitable trust" means a trust, or portion of a trust,
232 created for a charitable purpose described in Section
233 91-23-405(a).

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

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



240 decision, distribution decision, or any other decision of the
241 fiduciary.

242 (9) "Distribution interest" means:

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

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

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

262 (a) All income shall be distributed to a
263 named beneficiary; or



264 (b) One hundred thousand dollars (\$100,000) a
265 year shall be distributed to a named beneficiary;

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

272 (a) The trustee shall make distributions for
273 health, education, maintenance, and support;

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

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



287 (a) The trustee may, in the trustee's sole
288 and absolute discretion, make distributions for health, education,
289 maintenance, and support;

290 (b) The trustee, in the trustee's sole and
291 absolute discretion, shall make distributions for health,
292 education, maintenance, and support;

293 (c) The trustee may make distributions for
294 health, education, maintenance, and support;

295 (d) The trustee shall make distributions for
296 health, education, maintenance, and support; however, the trustee
297 may exclude any of the beneficiaries or may make unequal
298 distributions among them; or

299 (e) The trustee may make distributions for
300 health, education, maintenance, support, comfort, and general
301 welfare;

302 (f) A discretionary interest may also be
303 evidenced by:

304 (1) Permissive distribution language
305 such as "may make distributions";

306 (2) Mandatory distribution language that
307 is negated by the discretionary distribution language contained in
308 the trust such as "the trustee shall make distributions in the
309 trustee's sole and absolute discretion";

310 (g) An interest that includes mandatory
311 distribution language such as "shall" but is subsequently



312 qualified by discretionary distribution language shall be
313 classified as a discretionary interest and not as a support or a
314 mandatory interest;

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

320 (a) The trust shall be a mandatory
321 interest only to the extent of the mandatory distribution
322 language;

323 (b) The trust shall be a support
324 interest only to the extent of such support distribution language;
325 and

326 (c) The remaining trust property shall
327 be held as a discretionary interest;

328 (ii) For purposes of this subdivision (D), a
329 support interest that includes mandatory distribution language
330 such as "shall" but is subsequently qualified by discretionary
331 distribution language, shall be classified as a discretionary
332 interest and not as a support interest.

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



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

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

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

342 (12) "Fiduciary" means:

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

349 (B) For purposes of subdivision (A), an agency
350 agreement includes but is not limited to, any agreement under
351 which any delegation is made, either pursuant to Section 35-15-807
352 or by anyone holding a power or duty pursuant to Article 12;

353 (C) For purposes of the definition of fiduciary in
354 Section 91-23-103, fiduciary does not mean any person who is an
355 excluded fiduciary as such is defined in Section 91-23-103.

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



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

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

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

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

372 (18) "Power of appointment" means:

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

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

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



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

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

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

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

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

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

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

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

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



408 that person's contribution except to the extent another person has
409 the power to revoke or withdraw that portion.

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

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

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

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

426 (30) "Trust advisor" means any person described in Section
427 91-23-1201(a).

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

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



433 (33) "Trust protector" means any person described in Section
434 91-23-1201(a).

435 **SECTION 4.** The following shall be codified as Section
436 91-23-104, Mississippi Code of 1972:

437 91-23-104. **Knowledge.** (a) Subject to subsection (b), a
438 person has knowledge of a fact if the person:

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

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



457 **SECTION 5.** The following shall be codified as Section
458 91-23-105, Mississippi Code of 1972:

459 91-23-105. **Default and mandatory rules.** (a) Except as
460 otherwise provided in the terms of the trust, this chapter governs
461 the duties and powers of a trustee or any other fiduciary under
462 this chapter, relations among trustees and such other fiduciaries,
463 and the rights and interests of a beneficiary. The terms of a
464 trust may expand, restrict, eliminate, or otherwise vary the
465 duties and powers of a trustee, any such other fiduciary,
466 relations among any of them, and the rights and interests of a
467 beneficiary; provided, however, that nothing contained in this
468 subsection shall be construed to override or nullify the
469 provisions under subsection (b). The rule of statutory
470 construction that states statutes in derogation of the common law
471 are to be strictly construed shall have no application to this
472 section. Except as restricted by subsection (b), pursuant to this
473 section, courts shall give maximum effect to the principal of
474 freedom of disposition and to the enforceability of trust
475 instruments.

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

- 478 (1) The requirements for creating a trust;
- 479 (2) The duty of a trustee to act in good faith in
480 accordance with the terms and purposes of the trust and the
481 interests of the beneficiaries;



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

486 (4) The power of the court to modify or terminate a
487 trust under Sections 91-23-410 through 91-23-416;

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

492 (6) The power of the court under Section 91-23- 702 to
493 require, dispense with, or modify or terminate a bond;

494 (7) The power of the court under Section 91-23- 708(b)
495 to adjust a trustee's compensation specified in the terms of the
496 trust which is unreasonably low or high;

497 (8) Subject to subsection (d), the duty under Section
498 91-23-813(b) to notify beneficiaries of an irrevocable trust
499 (including anyone who holds of a power of appointment) who have
500 attained twenty-five (25) years of age that the trust has been
501 established as set forth in that Section 91-23-813(b);

502 (9) Subject to subsection (d), the duty under Section
503 91-23-813(a) (1) and (2) to keep the beneficiaries (including
504 anyone who holds a power of appointment) informed and to respond
505 to the request of a beneficiary of an irrevocable trust for



506 trustee's reports and other information reasonably related to the
507 administration of the trust;

508 (10) The effect of an exculpatory term under Section
509 91-23-1008;

510 (11) The rights under Sections 91-23-1010 through
511 91-23-1013 of a person other than a trustee or beneficiary;

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

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

517 (14) The subject-matter jurisdiction of the court and
518 venue for commencing a proceeding as provided in Sections
519 91-23-203 and 91-23-204.

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

523 (d) Notwithstanding subsection (b) (8) and (9) of this
524 section, the duties of a trustee to give notice, information and
525 reports under Section 91-23-813(a) and (b) may be waived or
526 modified in the trust instrument or by the settlor of the trust,
527 or a trust protector or trust advisor that holds the power to so
528 direct, directs otherwise in a writing delivered to the trustee in
529 any of the following ways:



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

533 (2) By specifying a different age at which a
534 beneficiary or class of beneficiaries must be notified under
535 Section 91-23-813(b); and

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

540 **SECTION 6.** The following shall be codified as Section
541 91-23-106, Mississippi Code of 1972:

542 91-23-106. **Common law of trusts; principles of equity.** The
543 common law of trusts and principles of equity supplement this
544 chapter, except to the extent modified by this chapter or another
545 statute of this state.

546 **SECTION 7.** The following shall be codified as Section
547 91-23-107, Mississippi Code of 1972:

548 91-23-107. **Governing law.** (a) The validity, construction
549 and administration of a trust are determined by the law of the
550 jurisdiction designated in the terms of the trust instrument.

551 (b) In the absence of a controlling designation in the terms
552 of the trust, the laws of the jurisdiction where the trust was
553 executed determine the validity of the trust, construction of the
554 trust instrument and the laws of descent, while the laws of the



555 principal place of administration determine the administration of
556 the trust.

557 **SECTION 8.** The following shall be codified as Section
558 91-23-108, Mississippi Code of 1972.

559 91-23-108. **Principal place of administration.** (a) Without
560 precluding other means for establishing a sufficient connection
561 with the designated jurisdiction, the terms of a trust designating
562 the principal place of administration are valid and controlling
563 if:

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

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

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

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

575 (3) Some or all of the trust assets are deposited in
576 the designated jurisdiction or physical evidence of such assets is
577 held in the designated jurisdiction and the trust is being
578 administered by a person defined in subsection (a)(1). For
579 purposes of this subsection (a)(3), "deposited in the designated



580 jurisdiction," includes assets being held in any of a checking
581 account, time deposit, certificate of deposit, brokerage account,
582 trust company fiduciary account, or other similar account or
583 deposit that is located in the designated jurisdiction.

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

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

601 (d) Without precluding the right of the court to order,
602 approve, or disapprove a transfer, the trustee may transfer the
603 trust's principal place of administration to another state or to a
604 jurisdiction outside of the United States, provided that the



605 transfer is to a place appropriate to the trust's purposes, its
606 administration and the interests of the beneficiaries.

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

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

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

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

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

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

623 (f) The authority of a trustee under this section to
624 transfer a trust's principal place of administration terminates if
625 a majority of the qualified beneficiaries described in Section
626 91-23-103 notify the trustee of an objection to the proposed
627 transfer on or before the date specified in the notice.

628 (g) In connection with a transfer of the trust's principal
629 place of administration, the trustee may transfer some or all of



630 the trust property to a successor trustee designated in the terms
631 of the trust or appointed pursuant to Section 91-23-704.

632 **SECTION 9.** The following shall be codified as Section
633 91-23-109, Mississippi Code of 1972:

634 91-23-109. **Methods and waiver of notice.** (a) Notice to a
635 person under this chapter or the sending of a document to a person
636 under this chapter must be accomplished in a manner reasonably
637 suitable under the circumstances and likely to result in receipt
638 of the notice or document. Permissible methods of notice or for
639 sending a document include first-class mail, personal delivery,
640 delivery to the person's last known place of residence or place of
641 business, or a properly directed electronic message.

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

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

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

651 **SECTION 10.** The following shall be codified as Section
652 91-23-110, Mississippi Code of 1972:

653 91-23-110. **Others treated as qualified beneficiaries.** A
654 charitable organization expressly designated to receive



655 distributions under the terms of a charitable trust has the rights
656 of a qualified beneficiary under this chapter if the charitable
657 organization, on the date the charitable organization's
658 qualification is being determined:

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

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

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

668 **SECTION 11.** The following shall be codified as Section
669 91-23-111, Mississippi Code of 1972:

670 91-23-111. **Nonjudicial settlement agreements.** (a) Except
671 as otherwise provided in subsection (b), the trustee and qualified
672 beneficiaries may enter into a binding nonjudicial settlement
673 agreement with respect to any matter involving a trust.

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

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



- 680 (1) The interpretation or construction of the terms of
681 the trust;
- 682 (2) The approval of a trustee's report or accounting;
- 683 (3) Direction to a trustee to refrain from performing a
684 particular act or the grant to a trustee of any necessary or
685 desirable power;
- 686 (4) The resignation or appointment of a trustee and the
687 determination of a trustee's compensation;
- 688 (5) Transfer of a trust's principal place of
689 administration;
- 690 (6) Liability of a trustee for an action relating to
691 the trust;
- 692 (7) The extent or waiver of bond of a trustee;
- 693 (8) The governing law of the trust; and
- 694 (9) The criteria for distribution to a beneficiary
695 where the trustee is given discretion.

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

701 **SECTION 12.** The following shall be codified as Section
702 91-23-112, Mississippi Code of 1972:

703 91-23-112. **Rules of construction.** The rules of construction
704 that apply in this state to the interpretation of and disposition



705 of property by will also apply as appropriate to the
706 interpretation of the terms of a trust and the disposition of the
707 trust property.

708 **SECTION 13.** The following shall be codified as Section
709 91-23-113, Mississippi Code of 1972:

710 91-23-113. **Insurable interest of trustee.** (a) In this
711 section, "settlor" means a person that executes a trust
712 instrument. The term includes a person for which a fiduciary or
713 agent is acting.

714 (b) A trustee of a trust has an insurable interest in the
715 life of an individual insured under a life insurance policy that
716 is owned by the trustee of the trust acting in a fiduciary
717 capacity or that designates the trust itself as the owner if, on
718 the date the policy is issued:

719 (1) The insured is:

720 (A) A settlor of the trust; or

721 (B) An individual in whom a settlor of the trust
722 has, or would have had if living at the time the policy was
723 issued, an insurable interest.

724 (2) The life insurance proceeds are primarily for the
725 benefit of one or more trust beneficiaries that have an insurable
726 interest in the life of the insured under Section 83-5-251.

727 (c) This section applies to any trust existing before, on,
728 or after July 1, 2014, regardless of the effective date of the
729 governing instrument under which the trust was created, but only



730 as to a life insurance policy that is in force and for which an
731 insured is alive on or after July 1, 2014.

732 **ARTICLE 2. JUDICIAL PROCEEDINGS**

733 **SECTION 14.** The following shall be codified as Section
734 91-23-201, Mississippi Code of 1972:

735 91-23-201. **Role of court in administration of trust.** (a)
736 The court may intervene in the administration of a trust to the
737 extent its jurisdiction is invoked by an interested person or as
738 provided by law.

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

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

744 (1) Request instructions;

745 (2) Determine the existence or nonexistence of any
746 immunity, power, privilege, duty or right;

747 (3) Approve a nonjudicial settlement;

748 (4) Interpret or construe the terms of the trust;

749 (5) Determine the validity of a trust or of any of its
750 terms;

751 (6) Approve a trustee's report or accounting or compel
752 a trustee to report or account;



- 753 (7) Direct a trustee to refrain from performing a
754 particular act or grant to a trustee any necessary or desirable
755 power;
- 756 (8) Review the actions or approve the proposed actions
757 of a trustee, including the exercise of a discretionary power;
- 758 (9) Accept the resignation of a trustee;
- 759 (10) Appoint or remove a trustee;
- 760 (11) Determine a trustee's compensation;
- 761 (12) Transfer a trust's principal place of
762 administration or a trust's property to another jurisdiction;
- 763 (13) Determine the liability of a trustee for an action
764 relating to the trust and compel redress of a breach of trust by
765 any available remedy;
- 766 (14) Modify or terminate a trust;
- 767 (15) Combine trusts or divide a trust;
- 768 (16) Determine liability of a trust for debts of a
769 beneficiary and living settlor;
- 770 (17) Determine liability of a trust for debts, expenses
771 of administration, and statutory allowances chargeable against the
772 estate of a deceased settlor;
- 773 (18) determine the liability of a trust for claims,
774 expenses and taxes in connection with the settlement of a trust
775 that was revocable at the settlor's death; and
- 776 (19) Ascertain beneficiaries and determine to whom
777 property will pass upon final or partial termination of a trust.



778 **SECTION 15.** The following shall be codified as Section
779 91-23-202, Mississippi Code of 1972:

780 91-23-202. **Jurisdiction over trustee and beneficiary.** (a)
781 By accepting the trusteeship of a trust having its principal place
782 of administration in this state or by moving the principal place
783 of administration to this state, the trustee submits personally to
784 the jurisdiction of the courts of this state regarding any matter
785 involving the trust.

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

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

796 **SECTION 16.** The following shall be codified as Section
797 91-23-203, Mississippi Code of 1972:

798 91-23-203. **Subject-matter jurisdiction.** (a) Except as
799 provided in subsections (b) and (c), the Chancery court has
800 exclusive jurisdiction of proceedings in this state brought by a
801 trustee or beneficiary concerning the administration of a trust.



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

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

808 **SECTION 17.** The following shall be codified as Section
809 91-23-204, Mississippi Code of 1972:

810 91-23-204. **Venue.** (a) Except as otherwise provided in
811 subsection (b), venue for a judicial proceeding involving a trust
812 is in the county of this state in which the trust's principal
813 place of administration is or will be located and, if the trust is
814 created by will and the estate is not yet closed, in the county in
815 which the decedent's estate is being administered.

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

822 **SECTION 18.** The following shall be codified as Section
823 91-23-205, Mississippi Code of 1972:

824 91-23-205. **Judicial accountings and settlements.** (a) A
825 trustee may file an accounting of the trustee's administration of
826 a trust in court at any time and seek a partial or final



827 settlement thereof or, upon petition of an interested party, a
828 court may order a trustee to render an accounting of the trustee's
829 administration of a trust and require a partial or final
830 settlement thereof. Notice of such judicial proceeding shall be
831 provided to the trustee and each beneficiary, or representative
832 thereof pursuant to Article 3, as provided by the applicable rules
833 of civil procedure.

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

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

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

846 (3) The accounting, to the extent feasible, must
847 identify and value trust assets on hand at the close of the
848 accounting period. For each asset or class of assets reasonably
849 capable of valuation, the accounting shall contain two values, (i)
850 the asset acquisition value or carrying value, and (ii) the
851 estimated current value, if feasible. The accounting must identify



852 each known noncontingent liability with an estimated current
853 amount of the liability if known.

854 (4) To the extent feasible, the accounting must show
855 the significant non-cash transactions affecting the assets of the
856 trust, including name changes in investment holdings, adjustments
857 to carrying value, or stock splits.

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

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

866 **ARTICLE 3. REPRESENTATION**

867 **SECTION 19.** The following shall be codified as Section
868 91-23-301, Mississippi Code of 1972:

869 91-23-301. **Representation: basic effect.** (a) Notice to a
870 person who may represent and bind another person under this
871 Article has the same effect as if notice were given directly to
872 the other person.

873 (b) The consent of a person who may represent and bind
874 another person under this Article is binding on the person
875 represented unless the person represented objects to the



876 representation before the consent would otherwise have become
877 effective.

878 (c) Except as otherwise provided in Sections 91-23-411 and
879 91-23-602, a person who under this Article may represent a settlor
880 who lacks capacity may receive notice and give a binding consent
881 on the settlor's behalf.

882 (d) A settlor may not represent and bind a beneficiary under
883 this Article with respect to the termination or modification of a
884 trust under Section 91-23-411(a).

885 **SECTION 20.** The following shall be codified as Section
886 91-23-302, Mississippi Code of 1972:

887 91-23-302. **Representation by holder of power of appointment.**
888 To the extent there is no material conflict of interest between
889 the holder of a power of appointment and the persons represented
890 with respect to the particular question or dispute, the holder may
891 represent and bind persons whose interests, as permissible
892 appointees, takers in default, or otherwise, are subject to the
893 power.

894 **SECTION 21.** The following shall be codified as Section
895 91-23-303, Mississippi Code of 1972:

896 91-23-303. **Representation by fiduciaries and parents.** To
897 the extent there is no material conflict of interest between the
898 representative and the person represented or among those being
899 represented with respect to a particular question or dispute:



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

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

905 (3) An agent having authority to act with respect to the
906 particular question or dispute may represent and bind the
907 principal;

908 (4) A trustee may represent and bind the beneficiaries of
909 the trust;

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

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

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

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

922 **SECTION 22.** The following shall be codified as Section
923 91-23-304, Mississippi Code of 1972:



924 91-23-304. **Representation by person having substantially**
925 **identical interest.** (a) Unless otherwise represented, a minor,
926 incapacitated, or unborn individual, or a person whose identity or
927 location is unknown and not reasonably ascertainable, may be
928 represented by and bound by another having a substantially
929 identical interest with respect to the particular question or
930 dispute, but only to the extent there is no material conflict of
931 interest between the representative and the person represented.

932 (b) Unless otherwise represented, whenever survivorship of
933 another person is an express or implied condition of receiving
934 property from a trust, the successor contingent remainder
935 beneficiary may be represented and bound by the presumptive
936 remainder beneficiary upon whose death the rights of the successor
937 contingent remainder beneficiary depend, but only to the extent
938 there is no material conflict of interest between the presumptive
939 remainder beneficiary and the successor contingent remainder
940 beneficiary.

941 **SECTION 23.** The following shall be codified as Section
942 91-23-305, Mississippi Code of 1972:

943 91-23-305. **Appointment of representative.** (a) If the court
944 determines that an interest is not represented under this Article,
945 or that the otherwise available representation might be
946 inadequate, the court may appoint a guardian ad litem or other
947 representative to receive notice, give consent, and otherwise
948 represent, bind, and act on behalf of a minor, incapacitated, or



949 unborn individual, or a person whose identity or location is
950 unknown. A guardian
951 ad litem or other representative may be appointed to represent
952 several persons or interests.

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

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

960 **ARTICLE 4. CREATION, VALIDITY, MODIFICATION,**
961 **AND TERMINATION OF TRUST**

962 **SECTION 24.** The following shall be codified as Section
963 91-23-401, Mississippi Code of 1972:

964 91-23-401. **Methods of creating trust.** A trust may be
965 created by:

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

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

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



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

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

978 (B) By an agent or attorney-in-fact under a power
979 of attorney that grants the agent or attorney-in-fact the
980 authority to act in the management and disposition of the
981 principal's property that is as broad or comprehensive as the
982 principal could exercise for himself or herself and that does not
983 expressly exclude the authority to create a trust. An agent or
984 attorney-in-fact may file a petition for the court to determine
985 whether a power of attorney described in this subdivision grants
986 the agent or attorney-in-fact authority that is as broad or
987 comprehensive as that which the principal could exercise for
988 himself or herself.

989 **SECTION 25.** The following shall be codified as Section
990 91-23-402, Mississippi Code of 1972:

991 91-23-402. **Requirements for creation.** (a) A trust is
992 created only if:

993 (1) The settlor has capacity to create a trust;
994 (2) The settlor indicates an intention to create the
995 trust;

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

997 (A) A charitable trust;



998 (B) A trust for the care of an animal, as provided
999 in Section 408; or

1000 (C) A trust for a noncharitable purpose, as
1001 provided in Section 409;

1002 (4) The trustee has duties to perform; and

1003 (5) The same person is not the sole trustee and sole
1004 beneficiary.

1005 (b) A beneficiary is definite if the beneficiary can be
1006 ascertained now or in the future, subject to any applicable rule
1007 against perpetuities.

1008 (c) A power in a trustee to select a beneficiary from an
1009 indefinite class is valid. If the power is not exercised within a
1010 reasonable time, the power fails and the property subject to the
1011 power passes to the persons who would have taken the property had
1012 the power not been conferred.

1013 (d) A settlor is deemed to have the capacity to create a
1014 trust if:

1015 (1) The trust is created by an agent of the settlor
1016 under a power of attorney as described in Section 91-23-401(5);
1017 and

1018 (2) The settlor had capacity to create a trust at the
1019 time the power of attorney was executed.

1020 **SECTION 26.** The following shall be codified as Section
1021 91-23-403, Mississippi Code of 1972:



1022 91-23-403. **Trusts created in other jurisdictions.** A trust
1023 not created by will is validly created if its creation complies
1024 with the law of the jurisdiction in which the trust instrument was
1025 executed, or the law of the jurisdiction in which, at the time of
1026 creation:

1027 (1) The settlor was domiciled, had a place of abode, or
1028 was a national;

1029 (2) A trustee was domiciled or had a place of business;
1030 or

1031 (3) Any trust property was located.

1032 **SECTION 27.** The following shall be codified as Section
1033 91-23-404, Mississippi Code of 1972:

1034 91-23-404. **Trust purposes.** A trust may be created only to
1035 the extent its purposes are lawful and possible to achieve. A
1036 trust and its terms must be for the benefit of its beneficiaries
1037 as the interests of such beneficiaries are defined under the terms
1038 of the trust.

1039 **SECTION 28.** The following shall be codified as Section
1040 91-23-405, Mississippi Code of 1972:

1041 91-23-405. **Charitable purposes; enforcement.** (a) A
1042 charitable trust may be created for the relief of poverty, the
1043 advancement of education or religion, the promotion of health,
1044 governmental or municipal purposes, or other purposes the
1045 achievement of which is beneficial to the community.



1046 (b) If the terms of a charitable trust do not indicate a
1047 particular charitable purpose or beneficiary, the court may select
1048 one (1) or more charitable purposes or beneficiaries. The
1049 selection must be consistent with the settlor's intention to the
1050 extent it can be ascertained.

1051 (c) The settlor of a charitable trust, among others, may
1052 maintain a proceeding to enforce the trust.

1053 **SECTION 29.** The following shall be codified as Section
1054 91-23-406, Mississippi Code of 1972:

1055 91-23-406. **Creation of trust induced by fraud, duress, or**
1056 **undue influence.** A trust is void to the extent its creation was
1057 induced by fraud, duress, or undue influence.

1058 **SECTION 30.** The following shall be codified as Section
1059 91-23-407, Mississippi Code of 1972:

1060 91-23-407. **Evidence of oral trust; trust in land.** (a)
1061 Except as provided in subsection (b) and except as required by a
1062 statute other than this chapter, a trust need not be evidenced by
1063 a trust instrument, but the creation of an oral trust and its
1064 terms may be established only by clear and convincing evidence.

1065 (b) (1) No trust of or in any real property can be created
1066 except by a written instrument signed by the party who declares or
1067 creates such trust (the Asettlor@), or by his last will, in
1068 writing. Every writing declaring or creating a trust in real
1069 property, other than a last will, may be acknowledged and proved
1070 as other writing and filed for record with the clerk of the



1071 Chancery Court in which the real property, or part of it, is
1072 located, and such filing shall serve as constructive notice of the
1073 existence and terms of the trust from and after filing.

1074 (2) In lieu of filing the trust instrument, there may
1075 be filed a memorandum of trust signed by the settlor, trustee, or
1076 successor trustee and acknowledged or proved as other writings,
1077 which memorandum shall contain the following information:

1078 (A) The name of the trust;

1079 (B) The street and mailing address of the office,
1080 and the name and street and mailing address and telephone number
1081 of the trustee;

1082 (C) The name and street and mailing address and
1083 telephone number of the settlor of the trust;

1084 (D) A legally sufficient description of all
1085 interests in real property owned by or conveyed to the trust;

1086 (E) The anticipated date of termination of the
1087 trust or the event upon which the trust will be terminated; and

1088 (F) The general powers granted to the trustee.

1089 The memorandum may also contain the name and street and mailing
1090 address and telephone number of any successor trustee, and if so,
1091 no amendment to the memorandum will be required to be filed if and
1092 when the successor trustee so named assumes office. The
1093 memorandum of trust may be filed with the clerk of the appropriate
1094 chancery court either before or after a deed of conveyance of real
1095 property to the trust or trustee, in his capacity as such. The



1096 memorandum need not comply with item (d) above if filed prior to
1097 or contemporaneously with a conveyance of any real property to the
1098 trust or trustee in his capacity as such, and need not be amended
1099 upon a subsequent conveyance of real property to the trust or
1100 trustee in his capacity as such, so long as the deed of conveyance
1101 is recorded in the appropriate county, and such recording of the
1102 deed of conveyance to the trust or trustee, as the case may be,
1103 shall constitute compliance with item (d) above. In addition, the
1104 deed of conveyance may also serve as a memorandum of trust, or an
1105 amendment to such document, as the case may be, so long as the
1106 deed of conveyance contains the information required for a
1107 memorandum of trust as set forth in this subsection (b).

1108 (3) The settlor may amend the memorandum if the
1109 trust to which it relates is subject to a power of amendment or
1110 revocation by the settlor; otherwise, only the then-serving
1111 trustee may amend the memorandum. The memorandum of amendment
1112 shall set forth the amendment to the original memorandum with
1113 particularity. The amended memorandum of trust may be made
1114 effective on a future date, which must be a date certain. The
1115 memorandum of amendment may be signed by the creator, trustee or
1116 successor trustee, as the case may be, and acknowledged or proved
1117 as other writings and filed for record with the clerk of the
1118 chancery court where the original memorandum is of record.



1119 (4) The provision of Sections 89-5-24 and 89-5-33
1120 shall apply to any trust instrument, memorandum, or amendment that
1121 is to be recorded under this subsection (b).

1122 (5) The provisions of this subsection (b) shall
1123 have no application to trusts of personal property, nor to any
1124 trust arising or resulting by implication of law out of a
1125 conveyance of land. The failure to file a copy of the trust
1126 instrument, memorandum or deed of conveyance shall not affect the
1127 validity of the trust or the trust instrument.

1128 **SECTION 31.** The following shall be codified as Section
1129 91-23-408, Mississippi Code of 1972:

1130 91-23-408. **Trust for care of animal.** (a) A trust may be
1131 created to provide for the care of an animal alive during the
1132 settlor's lifetime. The trust terminates upon the death of the
1133 animal or, if the trust was created to provide for the care of
1134 more than one (1) animal alive during the settlor's lifetime, upon
1135 the death of the last surviving animal.

1136 (b) A trust authorized by this section may be enforced by a
1137 person appointed in the terms of the trust or, if no person is so
1138 appointed, by a person appointed by the court. In addition, a
1139 person having a demonstrated interest in the welfare of the animal
1140 may request the court to appoint a person to enforce the trust or
1141 to remove a person appointed.

1142 (c) Property of a trust authorized by this section may be
1143 applied only to its intended use, except to the extent the court



1144 determines that the value of the trust property exceeds the amount
1145 required for the intended use. Except as otherwise provided in
1146 the terms of the trust, property not required for the intended use
1147 must be distributed to the settlor, if then living, otherwise to
1148 the settlor's successors in interest.

1149 **SECTION 32.** The following shall be codified as Section
1150 91-23-409, Mississippi Code of 1972:

1151 91-23-409. **Noncharitable trust without ascertainable**
1152 **beneficiary.** Except as otherwise provided in Section 91-23-408,
1153 Section 41-43-51 or by another statute, the following rules apply:

1154 (1) A trust may be created for a noncharitable purpose
1155 without a definite or definitely ascertainable beneficiary or for
1156 a noncharitable but otherwise valid purpose to be selected by the
1157 trustee. The trust may not be enforced for more than twenty-one
1158 (21) years;

1159 (2) A trust authorized by this section may be enforced by a
1160 person appointed under the terms of the trust, if no person is so
1161 appointed, by a person appointed by the court.

1162 (3) Property of a trust authorized by this section may be
1163 applied only to its intended use, except to the extent the court
1164 determines that the value of the trust property exceeds the amount
1165 required for the intended use. Except as otherwise provided in
1166 the terms of the trust, property not required for the intended use
1167 must be distributed to the settlor, if then living, otherwise to
1168 the settlor's successors in interest.



1169 **SECTION 33.** The following shall be codified as Section
1170 91-23-410, Mississippi Code of 1972:

1171 91-23-410. **Modification or termination of trust; proceedings**
1172 **for approval or disapproval.** (a) In addition to the methods of
1173 termination prescribed by Sections 91-23-411 through 91-23-414, a
1174 trust terminates to the extent the trust is revoked or expires
1175 pursuant to its terms, no purpose of the trust remains to be
1176 achieved, or the purposes of the trust have become unlawful or
1177 impossible to achieve.

1178 (b) A proceeding to approve or disapprove a proposed
1179 modification or termination under Sections 91-23-411 through
1180 91-23-416, or trust combination or division under Section
1181 91-23-417, may be commenced by a trustee or beneficiary. The
1182 settlor of a charitable trust may maintain a proceeding to modify
1183 the trust under Section 91-23-413.

1184 (c) Nothing in this section or this chapter is intended to
1185 create or imply a duty for a trustee to make or seek approval of a
1186 modification, termination, combination or division, and a trustee
1187 is not liable for not making or seeking approval of a
1188 modification, termination, combination or division.

1189 **SECTION 34.** The following shall be codified as Section
1190 91-23-411, Mississippi Code of 1972:

1191 91-23-411. **Modification or termination of noncharitable**
1192 **irrevocable trust by consent.** (a) During the settlor's lifetime,
1193 a noncharitable irrevocable trust may be modified or terminated by



1194 the trustee upon consent of all qualified beneficiaries, even if
1195 the modification or termination is inconsistent with a material
1196 purpose of the trust if the settlor does not object to the
1197 proposed modification or termination. The trustee shall notify
1198 the settlor of the proposed modification or termination not less
1199 than sixty (60) days before initiating the modification or
1200 termination. The notice of modification or termination must
1201 include:

1202 (1) An explanation of the reasons for the proposed
1203 modification or termination;

1204 (2) The date on which the proposed modification or
1205 termination is anticipated to occur; and

1206 (3) The date, not less than sixty (60) days after the
1207 giving of notice, by which the settlor must notify the trustee of
1208 an objection to the proposed modification or termination.

1209 (b) Following the settlor's death, a noncharitable
1210 irrevocable trust may be terminated upon consent of all of the
1211 beneficiaries if the court concludes that continuance of the trust
1212 is not necessary to achieve any material purpose of the trust. A
1213 noncharitable irrevocable trust may be modified upon consent of
1214 all of the beneficiaries if the court concludes that modification
1215 is not inconsistent with a material purpose of the trust.

1216 (c) Upon termination of a trust under subsection (a) or (b),
1217 the trustee shall distribute the trust property as agreed by the
1218 qualified beneficiaries.



1219 (d) If not all of the qualified beneficiaries consent to a
1220 proposed modification or termination of the trust under subsection
1221 (a) or (b), the modification or termination may be approved by the
1222 court if the court is satisfied that:

1223 (1) If all of the beneficiaries had consented, the
1224 trust could have been modified or terminated under this section;
1225 and

1226 (2) The interests of a qualified beneficiary who does
1227 not consent will be adequately protected.

1228 (e) Solely for purposes of this section, the term
1229 "noncharitable irrevocable trust" refers to a trust that is not
1230 revocable by the settlor with respect to which:

1231 (1) No federal or state income, gift, estate or
1232 inheritance tax charitable deduction was allowed upon transfers to
1233 the trust; and

1234 (2) The value of all interests in the trust owned by
1235 charitable organizations does not exceed five percent (5%) of the
1236 value of the trust.

1237 (f) Notwithstanding subsection (a), the trustee may seek
1238 court approval of a modification or termination.

1239 **SECTION 35.** The following shall be codified as Section
1240 91-23-412, Mississippi Code of 1972:

1241 91-23-412. **Modification or termination because of**
1242 **unanticipated circumstances or inability to administer trust**
1243 **effectively.** (a) The court may modify the administrative or



1244 dispositive terms of a trust or terminate the trust if, because of
1245 circumstances not anticipated by the settlor, modification or
1246 termination will further the purposes of the trust. To the extent
1247 practicable, the modification must be made in accordance with the
1248 settlor's probable intention.

1249 (b) The court may modify the administrative terms of a trust
1250 if continuation of the trust on its existing terms would be
1251 impracticable or wasteful or impair the trust's administration.

1252 (c) Upon termination of a trust under this section, the
1253 trustee shall distribute the trust property in a manner consistent
1254 with the purposes of the trust.

1255 **SECTION 36.** The following shall be codified as Section
1256 91-23-413, Mississippi Code of 1972:

1257 91-23-413. **Cy pres.** (a) Except as otherwise provided in
1258 subsection (b), if a particular charitable purpose becomes
1259 unlawful, impracticable, impossible to achieve, obsolete or
1260 ineffective:

1261 (1) The trust does not fail, in whole or in part;

1262 (2) The trust property does not revert to the settlor
1263 or the settlor's successors in interest; and

1264 (3) The court may apply cy pres to modify or terminate
1265 the trust by directing that the trust property be applied or
1266 distributed, in whole or in part, in a manner that fulfills as
1267 nearly as possible the settlor's charitable intent and purposes.



1268 (b) A provision in the terms of a charitable trust that
1269 would result in distribution of the trust property to a
1270 noncharitable beneficiary prevails over the power of the court
1271 under subsection (a) to apply cy pres to modify or terminate the
1272 trust only if, when the provision takes effect:

1273 (1) The trust property is to revert to the settlor and
1274 the settlor is still living; or

1275 (2) Fewer than twenty-one (21) years have elapsed since
1276 the date of the trust's creation.

1277 **SECTION 37.** The following shall be codified as Section
1278 91-23-414, Mississippi Code of 1972:

1279 91-23-414. **Modification or termination of uneconomic trust.**

1280 (a) After notice to the qualified beneficiaries, the trustee of a
1281 trust consisting of trust property having a total value less than
1282 One Hundred Fifty Thousand Dollars (\$150,000.00) may terminate the
1283 trust if the trustee concludes that the value of the trust
1284 property is insufficient to justify the cost of administration.

1285 (b) The court may modify or terminate a trust or remove the
1286 trustee and appoint a different trustee if it determines that the
1287 value of the trust property is insufficient to justify the cost of
1288 administration.

1289 (c) Upon termination of a trust under this section, the
1290 trustee shall distribute the trust property to or for the benefit
1291 of the beneficiaries, in such shares as the trustee, or the court
1292 in a court proceeding, determines, after taking into account the



1293 interests of income and remainder beneficiaries so as to conform
1294 as nearly as possible to the intention of the settlor, but a trust
1295 that qualified for the marital deduction for tax purposes shall
1296 only be distributed to the spouse of the settlor for whom the
1297 trust was created.

1298 (d) This section does not apply to an easement for
1299 conservation or preservation.

1300 (e) This section shall not limit the right of a trustee,
1301 acting alone, to terminate a trust in accordance with applicable
1302 provisions of the governing instrument.

1303 **SECTION 38.** The following shall be codified as Section
1304 91-23-415, Mississippi Code of 1972:

1305 91-23-415. **Reformation to correct mistakes.** The court may
1306 reform the terms of a trust, even if unambiguous, to conform the
1307 terms to the settlor's intention if it is proved by clear and
1308 convincing evidence what the settlor's intention was and that the
1309 terms of the trust were affected by a mistake of fact or law,
1310 whether in expression or inducement.

1311 **SECTION 39.** The following shall be codified as Section
1312 91-23-416, Mississippi Code of 1972:

1313 91-23-416. **Modification to achieve settlor's tax objectives.**
1314 To achieve the settlor's tax objectives, the court may modify the
1315 terms of a trust in a manner that is not contrary to the settlor's
1316 probable intention. The court may provide that the modification
1317 has retroactive effect.



1318 **SECTION 40.** The following shall be codified as Section
1319 91-23-417, Mississippi Code of 1972:

1320 91-23-417. **Combination and division of trusts.** (a) After
1321 notice to the qualified beneficiaries, a trustee may combine two
1322 (2) or more trusts into a single trust or divide a trust into two
1323 (2) or more separate trusts, if the result does not impair the
1324 rights of any beneficiary or adversely affect achievement of the
1325 purposes of the trust. In addition to any other combination or
1326 division the result of which does not impair the rights of any
1327 beneficiary or adversely affect achievement of the purposes of the
1328 trust, a combination or division pursuant to subsection (d) of
1329 this Section 91-23-417 shall not be considered as impairing the
1330 rights of any beneficiary or adversely affecting the achievement
1331 of the purposes of the trust. If the trusts to be combined or
1332 divided have different trustees, the trustees may negotiate the
1333 terms of the combined or divided trusts, including which trusts
1334 will be the surviving trust or trusts, who will be the trustee or
1335 trustees of the surviving trust or trusts and any other matter
1336 relating to the operation of the surviving trust or trusts.

1337 (b) In addition to combining two (2) or more trusts into a
1338 single trust or dividing a trust into two (2) or more separate
1339 trusts, a trustee, after notice to the qualified beneficiaries,
1340 may segregate by allocation to a separate account or trust a
1341 specific amount from, a portion of, or a specific asset included
1342 in the trust property of any trust to reflect a disclaimer, to



1343 reflect or result in differences in federal tax attributes, to
1344 satisfy any federal tax requirement, to make federal tax
1345 elections, to reduce potential generation-skipping transfer tax
1346 liability, or for any other tax planning purposes or other
1347 reasons.

1348 (c) A separate trust created by severance or segregation
1349 must be treated as a separate trust for all purposes from the
1350 effective date in which the severance or segregation is effective.
1351 The effective date of the severance or segregation may be
1352 retroactive. In managing, investing, administering and
1353 distributing the trust property of any separate account or trust
1354 and in making applicable tax elections, the trustee may consider
1355 the differences in federal tax attributes and all other factors
1356 the trustee believes pertinent and may make disproportionate
1357 distributions from the separate trusts or accounts created.

1358 (d) A trust or account created by consolidation, severance
1359 or segregation under this Section 91-23-417 shall not be
1360 considered as impairing the rights of a beneficiary if the trust
1361 is held on terms and conditions that are substantially equivalent
1362 to the terms of the trust before consolidation, severance or
1363 segregation so that the aggregate interests of each beneficiary
1364 are substantially equivalent to the beneficiary's interests in the
1365 trust or trusts before consolidation, severance or segregation. In
1366 determining whether a beneficiary's aggregate interests are
1367 substantially equivalent, the trustee shall consider the economic



1368 value of those interests to the extent they can be valued,
1369 considering actuarial factors as appropriate. If a beneficiary's
1370 interest cannot be valued with any reasonable degree of certainty
1371 because of the nature of the trust property, the terms of the
1372 trust, or other reasons, the trustee shall base the determination
1373 upon such other factors as are reasonable and appropriate under
1374 the facts and circumstances applicable to that particular trust,
1375 including the purposes of the trust. Provided, however, the terms
1376 of any trust before consolidation, severance or segregation which
1377 permit qualification of that trust for an applicable federal tax
1378 deduction, exclusion, election, exemption, or other special
1379 federal tax status must remain identical in the consolidated trust
1380 or in each of the separate trusts or accounts created by severance
1381 or segregation.

1382 (e) A trustee who acts in good faith is not liable to any
1383 person for taking into consideration differences in federal tax
1384 attributes and other pertinent factors in administering trust
1385 property of any separate account or trust, in making tax
1386 elections, and making distributions pursuant to the terms of the
1387 separate trust.

1388 (f) Income earned on a consolidated or severed or segregated
1389 amount, portion, or specific asset after the consolidation or
1390 severance is effective passes with that amount, portion or
1391 specific asset.



1392 (g) This Section 91-23-417 applies to all trusts whenever
1393 created, whether before, on, or after July 1, 2014, and whether
1394 such trusts are inter vivos or testamentary, are created by the
1395 same or different instruments, by the same or different persons
1396 and regardless of where created or administered.

1397 (h) This Section 91-23-417 does not limit the right of a
1398 trustee acting in accordance with the applicable provisions of the
1399 governing instrument to divide or consolidate trusts.

1400 (i) Nothing contained in this Section 91-23-417 shall be
1401 construed as granting to any trustee a general power of
1402 appointment over any trust not otherwise expressly granted in the
1403 trust instrument.

1404 **ARTICLE 5. CREDITOR'S CLAIMS;**

1405 **SPENDTHRIFT AND DISCRETIONARY TRUSTS**

1406 (Reserved)

1407 **ARTICLE 6. REVOCABLE TRUSTS**

1408 **SECTION 41.** The following shall be codified as Section
1409 91-23-601, Mississippi Code of 1972:

1410 91-23-601. **Capacity of settlor of revocable trust.** The
1411 capacity required to create, amend, revoke, or add property to a
1412 revocable trust, or to direct the actions of the trustee of a
1413 revocable trust, is the same as that required to make a will. To
1414 be effective as a post death disposition of property transferred
1415 during the transferor's life or by the transferor's will to a
1416 trust of which the transferor is the settlor or deemed to be the



1417 settlor, neither a revocable nor an irrevocable trust existing on
1418 or executed after [insert effective date of chapter], has to be
1419 executed with the formalities of a will.

1420 **SECTION 42.** The following shall be codified as Section
1421 91-23-602, Mississippi Code of 1972:

1422 91-23-602. **Revocation or amendment of revocable trust.** (a)
1423 Unless the terms of a trust expressly provide that the trust is
1424 irrevocable, the settlor may revoke or amend the trust. This
1425 subsection (a) does not apply to a trust created under an
1426 instrument executed before the effective date of this chapter.

1427 (b) If a revocable trust is created or funded by more than
1428 one (1) settlor:

1429 (1) To the extent the trust consists of community
1430 property, the trust may be revoked by either spouse acting alone
1431 but may be amended only by joint action of both spouses;

1432 (2) To the extent the trust consists of property other
1433 than community property, each settlor may revoke or amend the
1434 trust with regard the portion of the trust property attributable
1435 to that settlor's contribution;

1436 (3) At the death of one (1) settlor, each surviving
1437 settlor shall have the right to revoke the trust as to the
1438 surviving settlor's portion of the trust as determined by the type
1439 of property in accordance with subsection (b) (1) or (b) (2); and

1440 (4) Upon the revocation or amendment of the trust by
1441 fewer than all of the settlors or upon the death of one (1) of the



1442 settlors, the trustee shall promptly notify the other settlors of
1443 the revocation, amendment or death.

1444 (c) The settlor may revoke or amend a revocable trust:

1445 (1) By substantial compliance with a method provided in
1446 the terms of the trust; or

1447 (2) If the terms of the trust do not provide a method
1448 or the method provided in the terms is not expressly made
1449 exclusive, by:

1450 (A) A later will or codicil that expressly refers
1451 to the trust or specifically devises property that would otherwise
1452 have passed according to the terms of the trust; or

1453 (B) Any other method manifesting clear and
1454 convincing evidence of the settlor's intent; provided however,
1455 that a written revocable trust may only be amended and revoked by
1456 a later written instrument delivered to the trustee.

1457 (d) Upon revocation of a revocable trust, the trustee shall
1458 deliver the trust property as the settlor directs. However, with
1459 respect to community property under (b) (1), the trustee shall
1460 deliver the property one-half (1/2) to each spouse unless the
1461 trust instrument specifically states otherwise.

1462 (e) A settlor's powers with respect to revocation,
1463 amendment, or distribution of trust property may be exercised by
1464 an agent under a power of attorney only to the extent expressly
1465 authorized by the terms of the trust or the power.



1466 (f) A conservator or guardian of the settlor may exercise a
1467 settlor's powers with respect to revocation, amendment, or
1468 distribution of trust property only with the approval of the court
1469 supervising the conservatorship or guardianship.

1470 (g) A trustee who does not know that a trust has been
1471 revoked or amended is not liable to the settlor or settlor's
1472 successors in interest for distributions made and other actions
1473 taken on the assumption that the trust had not been amended or
1474 revoked.

1475 **SECTION 43.** The following shall be codified as Section
1476 91-23-603, Mississippi Code of 1972:

1477 91-23-603. **Settlor's powers; powers of withdrawal.** (a)
1478 While a trust is revocable rights of the beneficiaries are subject
1479 to the control of, and the duties of the trustee are owed
1480 exclusively to, the settlor.

1481 (b) If a revocable trust has more than one (1) settlor, the
1482 duties of the trustee are owed to all of the settlors having
1483 capacity to revoke the trust.

1484 (c) During the period the power may be exercised, the holder
1485 of a power of withdrawal has the rights of a settlor of a
1486 revocable trust under this section to the extent of the property
1487 subject to the power.

1488 **SECTION 44.** The following shall be codified as Section
1489 91-23-604, Mississippi Code of 1972:



1490 91-23-604. **Limitation on action contesting validity of**

1491 **revocable trust; distribution of trust property.** (a) A person

1492 may commence a judicial proceeding to contest the validity of all

1493 or part of the terms of a trust that was revocable at the

1494 settlor's death within the earlier of:

1495 (1) Two (2) years after the settlor's death; or

1496 (2) One hundred and twenty (120) days after the trustee

1497 sent the person a copy of the trust instrument and a notice

1498 informing the person of the trust's existence, of the trustee's

1499 name and address, and of the time allowed for commencing a

1500 proceeding.

1501 (b) Upon the death of the settlor of a trust that was

1502 revocable at the settlor's death, the trustee may proceed to

1503 distribute the trust property in accordance with the terms of the

1504 trust. The trustee is subject to liability for doing so only if:

1505 (1) The trustee knows of a pending judicial proceeding

1506 contesting the validity of all or part of the terms of the trust;

1507 or

1508 (2) A potential contestant has notified the trustee of

1509 a possible judicial proceeding to contest the trust and a judicial

1510 proceeding is commenced within sixty (60) days after the

1511 contestant sent the notification.

1512 (c) A beneficiary of a trust that is determined by a court

1513 proceeding to be invalid in whole or in part is liable to return

1514 to the court any distribution received for proper distribution to



1515 the extent that the invalidity applies to the distribution. If
1516 the beneficiary refuses to return the distribution after being
1517 ordered by the court, the beneficiary shall be liable for all
1518 costs incurred for recovery of the distribution.

1519 **ARTICLE 7. OFFICE OF TRUSTEE**

1520 **SECTION 45.** The following shall be codified as Section
1521 91-23-701, Mississippi Code of 1972:

1522 91-23-701. **Accepting or declining trusteeship.** (a) Except
1523 as otherwise provided in subsection (c), a person designated as
1524 trustee accepts the trusteeship:

1525 (1) By substantially complying with a method of
1526 acceptance provided in the terms of the trust; or

1527 (2) If the terms of the trust do not provide a method
1528 or the method provided in the terms is not expressly made
1529 exclusive, by accepting delivery of the trust property, exercising
1530 powers or performing duties as trustee, or otherwise indicating
1531 acceptance of the trusteeship.

1532 (b) A person designated as trustee who has not yet accepted
1533 the trusteeship may reject the trusteeship. A designated trustee
1534 who does not accept the trusteeship within a reasonable time after
1535 knowing of the designation is deemed to have rejected the
1536 trusteeship.

1537 (c) A person designated as trustee, without accepting the
1538 trusteeship, may:



1539 (1) Act to preserve the trust property if, within a
1540 reasonable time after acting, the person sends a rejection of the
1541 trusteeship to the settlor or, if the settlor is dead or lacks
1542 capacity, to a qualified beneficiary; and

1543 (2) Inspect or investigate trust property to determine
1544 potential liability under environmental or other law or for any
1545 other purpose.

1546 **SECTION 46.** The following shall be codified as Section
1547 91-23-702, Mississippi Code of 1972:

1548 91-23-702. **Trustee's bond.** (a) A trustee shall give bond
1549 to secure performance of the trustee's duties only if the court
1550 finds that a bond is needed to protect the interests of the
1551 beneficiaries or is required by the terms of the trust and the
1552 court has not dispensed with the requirement.

1553 (b) The court may specify the amount of a bond, its
1554 liabilities, and whether sureties are necessary. The court may
1555 modify or terminate a bond at any time.

1556 (c) A state or national bank, savings institution, or trust
1557 company authorized to exercise fiduciary powers and regulated by
1558 the office of the comptroller of the currency, office of thrift
1559 supervision, the Mississippi Department of Banking and Consumer
1560 Finance or equivalent state banking supervisors need not give
1561 bond, even if required by the terms of the trust.

1562 **SECTION 47.** The following shall be codified as Section
1563 91-23-703, Mississippi Code of 1972:



1564 91-23-703. **Cotrustees.** (a) Cotrustees who are unable to
1565 reach a unanimous decision after consultation among all the
1566 cotrustees may act by majority decision.

1567 (b) If a vacancy occurs in a cotrusteeship, the remaining
1568 cotrustees may act for the trust.

1569 (c) A cotrustee must participate in the performance of a
1570 trustee's function and consult with the other cotrustees unless
1571 the cotrustee is unavailable to perform the function because of
1572 absence, illness, disqualification under other law, or other
1573 temporary incapacity or the cotrustee has properly delegated the
1574 performance of the function to another trustee.

1575 (d) If a cotrustee is unavailable to perform duties because
1576 of absence, illness, disqualification under other law, or other
1577 temporary incapacity, and prompt action is necessary to achieve
1578 the purposes of the trust or to avoid injury to the trust
1579 property, the remaining cotrustee or a majority of the remaining
1580 cotrustees may act for the trust.

1581 (e) A trustee may delegate to a cotrustee the performance of
1582 a function other than a function that the terms of the trust
1583 instrument expressly require the trustees to perform jointly.
1584 Unless a delegation was irrevocable, a trustee may revoke a
1585 delegation previously made.

1586 (f) Except as otherwise provided in subsection (g), a
1587 trustee who does not join in an action of another trustee is not
1588 liable for the action.



1589 (g) Each trustee shall exercise reasonable care to:
1590 (1) Prevent a cotrustee from committing a serious
1591 breach of trust; and
1592 (2) Compel a cotrustee to redress a serious breach of
1593 trust.

1594 (h) A dissenting trustee who joins in an action at the
1595 direction of the majority of the trustees and who notified any
1596 cotrustee of the dissent at or before the time of the action is
1597 not liable for the action unless the action is a serious breach of
1598 trust.

1599 (i) A trustee shall keep each cotrustee and any other
1600 fiduciary reasonably informed about the administration of the
1601 trust, to the extent the trustee has knowledge that each such
1602 cotrustee or other fiduciary does not have such knowledge of the
1603 trustee's actions, or regarding other material information or the
1604 availability of such information, related to the administration of
1605 the trust that would be reasonably necessary for each such
1606 cotrustee or other fiduciary to perform his or her duties as a
1607 trustee or other fiduciary of the trust.

1608 **SECTION 48.** The following shall be codified as Section
1609 91-23-704, Mississippi Code of 1972:

1610 91-23-704. **Vacancy in trusteeship; appointment of successor.**

1611 (a) A vacancy in a trusteeship occurs if:
1612 (1) A person designated as trustee rejects the
1613 trusteeship;



1614 (2) A person designated as trustee cannot be identified
1615 or does not exist;

1616 (3) A trustee resigns;

1617 (4) A trustee is disqualified or removed;

1618 (5) A trustee dies; or

1619 (6) A conservator or guardian is appointed for an
1620 individual serving as trustee.

1621 (b) If one or more cotrustees remain in office, a vacancy in
1622 a trusteeship need not be filled. A vacancy in a trusteeship must
1623 be filled if the trust has no remaining trustee.

1624 (c) A vacancy in a trusteeship of a noncharitable trust that
1625 is required to be filled must be filled in the following order of
1626 priority:

1627 (1) By a person designated in the terms of the trust to
1628 act as successor trustee;

1629 (2) By a person appointed by unanimous agreement of the
1630 qualified beneficiaries; or

1631 (3) By a person appointed by the court.

1632 (d) A vacancy in a trusteeship of a charitable trust that is
1633 required to be filled must be filled in the following order of
1634 priority:

1635 (1) By a person designated in the terms of the trust to
1636 act as successor trustee;

1637 (2) By a person selected by the unanimous agreement of
1638 the charitable organizations expressly designated to receive



1639 distributions under the terms of the trust if the attorney general
1640 does not affirmatively object within thirty (30) days of receipt
1641 of notice of the person selected; or

1642 (3) By a person appointed by the court.

1643 (e) Whether or not a vacancy in a trusteeship exists or is
1644 required to be filled, the court may appoint an additional trustee
1645 or special fiduciary whenever the court considers the appointment
1646 necessary for the administration of the trust.

1647 **SECTION 49.** The following shall be codified as Section
1648 91-23-705, Mississippi Code of 1972:

1649 91-23-705. **Resignation of trustee.** (a) A trustee may
1650 resign:

1651 (1) Upon at least thirty (30) days' notice to the
1652 qualified beneficiaries, the settlor, if living, and all
1653 cotrustees; or

1654 (2) With the approval of the court.

1655 (b) In approving a resignation, the court may issue orders
1656 and impose conditions reasonably necessary for the protection of
1657 the trust property.

1658 (c) Any liability of a resigning trustee or of any sureties
1659 on the trustee's bond for acts or omissions of the trustee is not
1660 discharged or affected by the trustee's resignation.

1661 **SECTION 50.** The following shall be codified as Section
1662 91-23-706, Mississippi Code of 1972:



1663 91-23-706. **Removal of trustee.** (a) The settlor, a
1664 cotrustee, or a beneficiary may request the court to remove a
1665 trustee, or a trustee may be removed by the court on its own
1666 initiative.

1667 (b) The court may remove a trustee if:

1668 (1) The trustee has committed a serious breach of
1669 trust;

1670 (2) Lack of cooperation among cotrustees substantially
1671 impairs the administration of the trust;

1672 (3) Because of unfitness, unwillingness, or persistent
1673 failure of the trustee to administer the trust effectively, the
1674 court determines that removal of the trustee best serves the
1675 interests of the beneficiaries; or

1676 (4) There has been a substantial change of
1677 circumstances or removal is requested by all of the qualified
1678 beneficiaries, the court finds that removal of the trustee best
1679 serves the interests of all of the beneficiaries and is not
1680 inconsistent with a material purpose of the trust, and a suitable
1681 cotrustee or successor trustee is available.

1682 (c) Pending a final decision on a request to remove a
1683 trustee, or in lieu of or in addition to removing a trustee, the
1684 court may order such appropriate relief under Section
1685 91-23-1001(b) as may be necessary to protect the trust property or
1686 the interests of the beneficiaries.



1687 **SECTION 51.** The following shall be codified as Section
1688 91-23-707, Mississippi Code of 1972:

1689 91-23-707. **Delivery of property by former trustee.** (a)
1690 Unless a cotrustee remains in office or the court otherwise
1691 orders, and until the trust property is delivered to a successor
1692 trustee or other person entitled to it, a trustee who has resigned
1693 or been removed has the duties of a trustee and the powers
1694 necessary to protect the trust property.

1695 (b) A trustee who has resigned or been removed shall, within
1696 a reasonable time, deliver the trust property within the trustee's
1697 possession to the cotrustee, successor trustee, or other person
1698 entitled to it.

1699 **SECTION 52.** The following shall be codified as Section
1700 91-23-708, Mississippi Code of 1972:

1701 91-23-708. **Compensation of trustee, trust advisor and trust**
1702 **protector.** (a) If the terms of a trust do not specify the
1703 trustee's, trust advisor's or trust protector's compensation, and
1704 if the settlor, if living, or otherwise a majority of the
1705 qualified beneficiaries as defined in Section 91-23-103, have not
1706 otherwise agreed with the trustee, trust advisor or trust
1707 protector, a trustee, trust advisor or trust protector is entitled
1708 to compensation that is reasonable under the circumstances.

1709 (b) If the terms of a trust specify the trustee's, trust
1710 advisor's or trust protector's compensation, the trustee, trust
1711 advisor or trust protector is entitled to be compensated as



1712 specified in the trust, but the court may allow more or less
1713 compensation if:

1714 (1) The duties of the trustee, trust advisor or trust
1715 protector are substantially different from those contemplated when
1716 the trust was created; or

1717 (2) The compensation specified by the terms of the
1718 trust would be unreasonably low or high.

1719 (c) Factors for the court to consider in deciding upon a
1720 trustee's, trust advisor's or trust protector's compensation shall
1721 include the size of the trust, the nature and number of the
1722 assets, the income produced, the time and responsibility required,
1723 the expertise required, any management or sale of real property or
1724 closely held business interests, any involvement in litigation to
1725 protect trust property, and other relevant factors.

1726 (d) Subject to the court's authority as provided in
1727 subsection (b), regardless of its form of entity, the fees set
1728 forth in the published fee schedule of a trustee, trust advisor or
1729 trust protector that is regulated by the Mississippi Department of
1730 Banking and Consumer Finance, the equivalent regulatory agency of
1731 another state, the office of the comptroller of the currency or
1732 the office of thrift supervision shall be presumed to be
1733 reasonable, unless otherwise provided by the terms of the trust.

1734 **SECTION 53.** The following shall be codified as Section
1735 91-23-709, Mississippi Code of 1972:



1736 91-23-709. **Reimbursement of expenses.** (a) A trustee, trust
1737 advisor or trust protector is entitled to be reimbursed out of the
1738 trust property, with interest as appropriate, for:

1739 (1) expenses that were properly incurred in the
1740 administration of the trust, including the defense or prosecution
1741 of any action, whether successful or not, unless the trustee is
1742 determined to have willfully or wantonly committed a material
1743 breach of trust; and

1744 (2) To the extent necessary to prevent unjust
1745 enrichment of the trust, expenses that were not properly incurred
1746 in the administration of the trust.

1747 (b) An advance by the trustee, trust advisor or trust
1748 protector or by a person named in Section 91-23-701(c)(1) of money
1749 for the protection of the trust gives rise to a lien against trust
1750 property to secure reimbursement with reasonable interest.

1751 **SECTION 54.** The following shall be codified as Section
1752 91-23-710, Mississippi Code of 1972:

1753 91-23-710. **Directed trusts.** If the terms of the trust
1754 require a trustee, trust advisor, or trust protector to follow the
1755 direction of a trust advisor or trust protector, and the trustee,
1756 trust advisor, or trust protector acts in accordance with such
1757 direction, then the trustee, trust advisor, or trust protector so
1758 directed shall be treated as an excluded fiduciary.

1759 **SECTION 55.** The following shall be codified as Section
1760 91-23-711, Mississippi Code of 1972:



1761 91-23-711. **Directed trusts; accepting or declining fiduciary**
1762 **appointment.** (a) A trust advisor, trust protector or other
1763 fiduciary other than a cotrustee, such cotrustee already being
1764 provided for in Section 91-23-701(a), may accept its appointment
1765 as such respective fiduciary in a like manner as provided for a
1766 trustee under Section 91-23-701(a).

1767 (b) A trust advisor, trust protector or other fiduciary
1768 other than a cotrustee, such cotrustee already being provided for
1769 in Section 91-23-701(b), may reject its appointment as such
1770 respective fiduciary in a like manner as provided for a trustee
1771 under Section 91-23-701(b).

1772 (c) A trust advisor, trust protector or other fiduciary
1773 other than a cotrustee, such cotrustee already being provided for
1774 in Section 91-23-701(c), may, without accepting its appointment as
1775 such respective fiduciary, carry out the appropriate activities
1776 relative to such respective fiduciary as are provided for a
1777 trustee under Section 91-23-701(c).

1778 **SECTION 56.** The following shall be codified as Section
1779 91-23-712, Mississippi Code of 1972:

1780 91-23-712. **Directed trusts; fiduciary's bond.** (a) Section
1781 91-23-702 applies to trust advisors, trust protectors or other
1782 fiduciaries other than cotrustees, such cotrustees already being
1783 provided for in Section 91-23-702.

1784 (b) When exercising its powers under this section, the court
1785 shall consider the powers, duties and liabilities relative to such



1786 respective fiduciaries other than a cotrustee and whether any of
1787 such respective fiduciaries are excluded fiduciaries.

1788 **SECTION 57.** The following shall be codified as Section
1789 91-23-713, Mississippi Code of 1972:

1790 91-23-713. **Vacancy; directed trusts.** (a) Except as
1791 otherwise provided by the terms of the trust upon obtaining
1792 knowledge of a vacancy in the office of trust advisor or trust
1793 protector, the trustee shall be vested with any fiduciary power or
1794 duty that otherwise would be vested in the trustee but that by the
1795 terms of the trust was vested in the trust advisor or trust
1796 protector, until such time that the vacancy in the office of trust
1797 advisor or trust protector, as applicable is filled.

1798 (b) Such vacancy shall be filled in the same manner as would
1799 a vacancy in trusteeship that is required to be filled, either as
1800 provided by Section 91-23-704(c) if the trust is a noncharitable
1801 trust, or as provided by Section 91-23-704(d) if the trust is a
1802 charitable trust. Section 91-23-704(e) shall also apply relative
1803 to trust advisors and trust protectors in the same manner as that
1804 subsection does to trustees and vacancies in trusteeship.

1805 (c) Notwithstanding subsection (a), a trustee shall not be
1806 liable for failing to exercise or assume any power or duty held by
1807 a trust advisor or trust protector and conferred upon the trustee
1808 by subsection (a) for the one hundred and twenty-day period
1809 immediately following the date the trustee obtains knowledge of
1810 such vacancy.



1811 **SECTION 58.** The following shall be codified as Section
1812 91-23-714, Mississippi Code of 1972:

1813 91-23-714. **Directed trusts; resignation of fiduciary.** (a)
1814 A trust advisor, trust protector or other fiduciary other than a
1815 cotrustee, such cotrustee's resignation already being provided for
1816 in Section 91-23-705, may resign its appointment as such
1817 respective fiduciary in a like manner as provided for a trustee
1818 under Section 91-23-705.

1819 (b) When exercising its powers under this section relative
1820 to resignation, the court shall consider the powers, duties and
1821 liabilities relative to such respective fiduciaries other than a
1822 cotrustee and whether any of such respective fiduciaries are
1823 excluded fiduciaries.

1824 **SECTION 59.** The following shall be codified as Section
1825 91-23-715, Mississippi Code of 1972:

1826 91-23-715. **Directed trusts; removal of fiduciary.** (a) A
1827 trust advisor, trust protector or other fiduciary other than a
1828 cotrustee, such cotrustee's removal already being provided for in
1829 Section 91-23-706, may be removed as such respective fiduciary in
1830 a like manner as provided for a trustee under Section 91-23-706.

1831 (b) When exercising its powers under this section relative
1832 to removal of such respective fiduciary, the court shall consider
1833 the powers, duties and liabilities relative to such respective
1834 fiduciaries other than a cotrustee and whether any of such
1835 respective fiduciaries are excluded fiduciaries.



1836 **ARTICLE 8. DUTIES AND POWERS OF TRUSTEE**

1837 **SECTION 60.** The following shall be codified as Section
1838 91-23-801, Mississippi Code of 1972:

1839 91-23-801. **Duty to administer trust.** Upon acceptance of a
1840 trusteeship, the trustee shall administer the trust until such
1841 time as the trust terminates or a successor trustee is appointed
1842 and all assets are delivered in good faith, in accordance with its
1843 terms and purposes and the interests of the beneficiaries, and in
1844 accordance with this chapter.

1845 **SECTION 61.** The following shall be codified as Section
1846 91-23-802, Mississippi Code of 1972:

1847 91-23-802. **Duty of loyalty.** (a) A trustee shall administer
1848 the trust solely in the interests of the beneficiaries.

1849 (b) Subject to the rights of persons dealing with or
1850 assisting the trustee as provided in Section 91-23-1012 or as may
1851 otherwise be allowed under Mississippi law, a sale, encumbrance,
1852 or other transaction involving the investment or management of
1853 trust property entered into by the trustee for the trustee's own
1854 personal account or which is otherwise affected by a conflict
1855 between the trustee's fiduciary and personal interests is voidable
1856 by a beneficiary affected by the transaction unless:

1857 (1) The transaction was authorized by the terms of the
1858 trust;

1859 (2) The transaction was approved by the court;



1860 (3) The beneficiary did not commence a judicial
1861 proceeding within the time allowed by Section 91-23-1005;

1862 (4) The beneficiary consented to the trustee's conduct,
1863 ratified the transaction, or released the trustee in compliance
1864 with Section 91-23-1009; or

1865 (5) The transaction involves a contract entered into or
1866 claim acquired by the trustee before the person became or
1867 contemplated becoming trustee.

1868 (c) A sale, encumbrance, or other transaction involving the
1869 investment or management of trust property is presumed to be
1870 affected by a conflict between personal and fiduciary interests if
1871 it is entered into by the trustee with:

1872 (1) The trustee's spouse;

1873 (2) The trustee's descendants, siblings, parents, or
1874 their spouses;

1875 (3) An agent or attorney of the trustee; or

1876 (4) A corporation or other person or enterprise in
1877 which the trustee, or a person that owns a significant interest in
1878 the trustee, has an interest that might affect the trustee's best
1879 judgment.

1880 (d) A transaction not concerning trust property in which the
1881 trustee engages in the trustee's individual capacity involves a
1882 conflict between personal and fiduciary interests if the
1883 transaction concerns an opportunity properly belonging to the
1884 trust.



1885 (e) In addition to all other permissible investments and
1886 delegatable duties listed in this title, so long as they are
1887 fairly priced and in accordance with the interest of the
1888 beneficiaries and the interests of the fiduciary's appointment and
1889 otherwise comply with the Mississippi Uniform Prudent Investor Act
1890 or Article 12 of this chapter, a fiduciary may purchase, sell,
1891 hold or otherwise deal with an affiliate or an interest in an
1892 affiliated investment, as well as delegate to an affiliate or
1893 other agent associated with the fiduciary and, upon satisfaction
1894 of the conditions stated in subsection (g), such fiduciary may
1895 receive fiduciary compensation from such account at the same rate
1896 as the fiduciary would otherwise be entitled to be compensated.
1897 Such activities shall occur without any presumption of a conflict
1898 between personal and fiduciary interests of the trustee or other
1899 fiduciary.

1900 (f) As used in this section:

1901 (1) "Affiliate" means any corporation or other entity
1902 that directly or indirectly through one or more intermediaries
1903 controls, is controlled by or is under common control with the
1904 fiduciary;

1905 (2) "Affiliated investment" means an investment for
1906 which the fiduciary or an affiliate of the fiduciary acts as
1907 adviser, administrator, distributor, placement agent, underwriter,
1908 broker or in any other capacity for which it receives or has
1909 received a fee or commission from such investment or an investment



1910 acquired or disposed of in a transaction for which the fiduciary
1911 or an affiliate of the fiduciary receives or has received a fee or
1912 commission. "Affiliated investment" also means an investment in
1913 an insurance contract purchased from an insurance agency owned by,
1914 or affiliated with, the fiduciary, or any of its affiliates;

1915 (3) "Delegate to an affiliate or associated agent"
1916 means a proper delegation of any duty of the fiduciary to any
1917 person or entity that is affiliated with, or associated with, the
1918 fiduciary. The action of doing any of the above shall be known as
1919 a "delegation to an affiliate or associated agent";

1920 (4) "Fee or commission" means compensation paid to a
1921 fiduciary or an affiliate thereof on account of its services to or
1922 on behalf of an investment;

1923 (5) For purposes of this section, "fiduciary" means any
1924 fiduciary as defined in Section 91-23-103, as well as any other
1925 fiduciary; and

1926 (6) "Investment" shall mean any security as defined in
1927 Section 2(a)(1) of the Securities Act of 1933, any contract of
1928 sale of a commodity for future delivery within the meaning of
1929 Section 2(i) of the Commodity Exchange Act, or any other asset
1930 permitted for fiduciary accounts pursuant to the terms of [the
1931 Mississippi Uniform Prudent Investor Act or by the terms of the
1932 governing instrument, including by way of illustration and not
1933 limitation: shares or interests in a public or private investment
1934 fund, which shall include, but not be limited to, a public or



1935 private investment fund organized as a limited partnership,
1936 limited liability company, statutory or common law business trust,
1937 real estate investment trust, joint venture or other general or
1938 limited partnership; or an open-end or closed-end management type
1939 investment company or investment trust registered under the
1940 Investment Company Act of 1940.

1941 (g) A fiduciary seeking compensation pursuant to subsection
1942 (e) shall, as is applicable relative to the fiduciary's particular
1943 appointment, disclose either: to those persons entitled to be kept
1944 informed about the administration of a trust under Section
1945 91-23-813(a), subject to the provisions of Sections 91-23-813(d)
1946 and 91-23-105(d); to each principal in an agency relationship; or
1947 to all current recipients of statements of any other fiduciary
1948 account not described above; all fees or commissions paid or to be
1949 paid by the account, or received or to be received by an affiliate
1950 arising from such affiliated investment or delegation to an
1951 affiliate or associated agent. The disclosure required under this
1952 subsection (g) may be given either in a copy of the prospectus or
1953 any other disclosure document prepared for the affiliated
1954 investment under federal or state securities laws or in a written
1955 summary that includes all fees or commissions received or to be
1956 received by the fiduciary or any affiliate of the fiduciary and an
1957 explanation of the manner in which such fees or commissions are
1958 calculated, either as a percentage of the assets invested or by
1959 some other method. Such disclosure shall be made at least



1960 annually unless there has been no increase in the rate at which
1961 such fees or commissions are calculated since the most recent
1962 disclosure. Notwithstanding this subsection (g), no such
1963 disclosure is required if the governing instrument or a court
1964 order expressly authorizes the fiduciary to invest the fiduciary
1965 account in affiliated investments or to perform the delegation to
1966 an affiliate or associated agent.

1967 (h) A fiduciary that has complied with subsection (g),
1968 whether by making the applicable disclosure or by relying on the
1969 terms of a governing instrument or court order, shall have full
1970 authority to administer an affiliated investment, including the
1971 authority to vote proxies thereon, without regard to the
1972 affiliation between the fiduciary and the investment or the
1973 fiduciary and delegatee, as the case may be.

1974 (i) In voting shares of stock or in exercising powers of
1975 control over similar interests in other forms of enterprise, the
1976 trustee shall act in the best interests of the beneficiaries. If
1977 the trust is the sole owner of a corporation or other form of
1978 enterprise, the trustee shall elect or appoint directors or other
1979 managers who will manage the corporation or enterprise in the best
1980 interests of the beneficiaries.

1981 (j) The following transactions, if fairly priced and in
1982 accordance with the interest of the beneficiaries and the purposes
1983 of the trust, are not presumed to be affected by a conflict
1984 between the trustee's personal and fiduciary interest provided



1985 that any investment made pursuant to the transaction otherwise
1986 complies with the Mississippi Prudent Investor Act:

1987 (1) An agreement between a trustee and a beneficiary
1988 relating to the appointment or compensation of the trustee, or any
1989 of its affiliates;

1990 (2) Payment of reasonable compensation to the trustee,
1991 or any of its affiliates;

1992 (3) A transaction between a trust and another trust,
1993 decedent's estate, guardianship or conservatorship of which the
1994 trustee is a fiduciary or in which a beneficiary has an interest;

1995 (4) A deposit of trust money in a regulated
1996 financial-service institution operated by the trustee or an
1997 affiliate;

1998 (5) An advance by the trustee of money for the
1999 protection of the trust;

2000 (6) An investment by a trustee in securities of an
2001 investment company or investment trust to which the trustee, or
2002 its affiliates, provides services in a capacity other than as a
2003 trustee provided that any investment made pursuant to the
2004 transaction otherwise complies with Mississippi Prudent Investor
2005 Act;

2006 (7) The placing of securities transactions by a trustee
2007 through a securities broker that is part of the same company as
2008 the trustee, is owned by the trustee, or is affiliated with the
2009 trustee;



2010 (8) Any loan from the trustee or its affiliate;
2011 (9) An investment in an insurance contract purchased
2012 from an insurance agency owned by, or affiliated with the trustee,
2013 or any of its affiliates; or
2014 (10) A delegation and any transaction made pursuant to
2015 the delegation from a trustee to an agent that is affiliated or
2016 associated with the trustee.
2017 (k) The court may appoint a special fiduciary to make a
2018 decision with respect to any proposed transaction that might
2019 violate this section if entered into by the trustee.

2020 **SECTION 62.** The following shall be codified as Section
2021 91-23-803, Mississippi Code of 1972:

2022 91-23-803. **Impartiality.** If a trust has two (2) or more
2023 beneficiaries, the trustee shall act impartially in investing,
2024 managing, and distributing the trust property, giving due regard
2025 to the beneficiaries' respective interests and the purposes of the
2026 trust.

2027 **SECTION 63.** The following shall be codified as Section
2028 91-23-804, Mississippi Code of 1972:

2029 91-23-804. **Prudent administration.** A trustee shall
2030 administer the trust as a prudent person would, by considering the
2031 purposes, terms, distributional requirements, and other
2032 circumstances of the trust. In satisfying this standard, the
2033 trustee shall exercise reasonable care, skill, and caution.



2034 **SECTION 64.** The following shall be codified as Section
2035 91-23-805, Mississippi Code of 1972:

2036 91-23-805. **Costs of administration.** In administering a
2037 trust, the trustee may incur only costs that are reasonable in
2038 relation to the trust property, the purposes of the trust, and the
2039 skills of the trustee.

2040 **SECTION 65.** The following shall be codified as Section
2041 91-23-806, Mississippi Code of 1972:

2042 91-23-806. **Trustee's skills.** A trustee who has special
2043 skills or expertise, or is named trustee in reliance upon the
2044 trustee's representation that the trustee has special skills or
2045 expertise, shall use those special skills or expertise.

2046 **SECTION 66.** The following shall be codified as Section
2047 91-23-807, Mississippi Code of 1972:

2048 91-23-807. **Delegation by trustee.** (a) A trustee may
2049 delegate duties and powers that a prudent trustee could properly
2050 delegate under the circumstances. The trustee shall exercise
2051 reasonable care, skill, and caution in:

2052 (1) Selecting an agent;
2053 (2) Establishing the scope and terms of the delegation,
2054 consistent with the purposes and terms of the trust; and

2055 (3) Periodically reviewing the agent's actions in order
2056 to monitor the agent's performance and compliance with the terms
2057 of the delegation.



2058 (b) In performing a delegated function, an agent owes a duty
2059 to the trust to exercise reasonable care, skill, and caution to
2060 comply with the terms of the delegation.

2061 (c) A trustee who complies with subsection (a) is not liable
2062 to the beneficiaries or to the trust for an action or inaction of
2063 the agent to whom the function was delegated.

2064 (d) By accepting a delegation of powers or duties from the
2065 trustee of a trust that is subject to the law of this state, an
2066 agent submits to the jurisdiction of the courts of this state.

2067 **SECTION 67.** The following shall be codified as Section
2068 91-23-808, Mississippi Code of 1972:

2069 91-23-808. **Powers to direct.** (a) While a trust is
2070 revocable, the trustee may follow a direction of the settlor that
2071 is contrary to the terms of the trust or contrary to the normal
2072 practice of the trustee in regard to the action requested.

2073 (b) If the terms of a trust confer upon a person other than
2074 the settlor of a revocable trust power to direct certain actions
2075 of the trustee, the trustee shall act in accordance with an
2076 exercise of the power.

2077 (c) The terms of a trust may confer upon a trustee or other
2078 person a power to direct the modification or termination of the
2079 trust.

2080 (d) If a person holds a power to direct pursuant to Article
2081 12 of this chapter, that person is a trust advisor, trust
2082 protector or both. Such power holder is subject to all the



2083 provisions of Article 12, including any duties prescribed by
2084 Article 12 and any provisions that make the power holder a
2085 fiduciary. Any trustee or other person that under Article 12 is
2086 relieved of any duty or any liability, or is otherwise protected
2087 under Article 12, shall be so relieved and otherwise protected.

2088 **SECTION 68.** The following shall be codified as Section
2089 91-23-809, Mississippi Code of 1972:

2090 91-23-809. **Control and protection of trust property.** A
2091 trustee shall take reasonable steps to take control of and protect
2092 the trust property.

2093 **SECTION 69.** The following shall be codified as Section
2094 91-23-810, Mississippi Code of 1972:

2095 91-23-810. **Recordkeeping and identification of trust**
2096 **property.** (a) A trustee shall keep adequate records of the
2097 administration of the trust.

2098 (b) A trustee shall keep trust property separate from the
2099 trustee's own property.

2100 (c) Except as otherwise provided in subsection (d), a
2101 trustee shall cause the trust property to be designated so that
2102 the interest of the trust, to the extent feasible, appears in
2103 records maintained by a party other than a trustee or beneficiary.

2104 (d) If the trustee maintains records clearly indicating the
2105 respective interests, a trustee may invest as a whole the property
2106 of two or more separate trusts.



2107 **SECTION 70.** The following shall be codified as Section
2108 91-23-811, Mississippi Code of 1972:

2109 91-23-811. **Enforcement and defense of claims.** (a) A
2110 trustee shall take reasonable steps to enforce claims of the trust
2111 and to defend claims against the trust.

2112 (b) A trustee may abandon or assign any claim that it
2113 believes is unreasonable to enforce to one or more of the
2114 beneficiaries of the trust holding the claim.

2115 **SECTION 71.** The following shall be codified as Section
2116 91-23-812, Mississippi Code of 1972:

2117 91-23-812. **Collecting trust property.** A trustee shall take
2118 reasonable steps to compel a former trustee or other person to
2119 deliver trust property to the trustee, and to redress a breach of
2120 trust known to the trustee to have been committed by a former
2121 trustee. No successor trustee appointed after the examination of
2122 the accounts of a trustee or the waiver of the examination by the
2123 beneficiaries shall be responsible for the acts and omissions of
2124 the prior trustee.

2125 **SECTION 72.** The following shall be codified as Section
2126 91-23-813, Mississippi Code of 1972:

2127 91-23-813. **Duty to inform and report.** (a) (1) A trustee
2128 shall keep the beneficiaries of the trust who are current
2129 mandatory or permissible distributees of trust income or
2130 principal, or both, reasonably informed about the administration



2131 of the trust and of the material facts necessary for them to
2132 protect their interests.

2133 (2) Unless unreasonable under the circumstances, a
2134 trustee shall respond in a reasonable amount of time to a
2135 qualified beneficiary's request for information related to the
2136 administration of the trust. Additionally, a qualified
2137 beneficiary shall reimburse the trustee for any reasonable
2138 expenses incurred in responding to requests for information.

2139 (3) The requirements of subdivisions (a)(1) and (a)(2)
2140 shall also apply to the benefit of anyone who, in a capacity other
2141 than that of a fiduciary, as defined by Section 91-23-103, holds a
2142 power of appointment.

2143 (b) The trustee of an irrevocable or nongrantor trust within
2144 sixty (60) days after the acceptance and funding of a trust,
2145 excluding nominal funding for the trust to have corpus or the
2146 depositing of insurance policies on the life of a living person,
2147 shall notify each current income beneficiary, each vested ultimate
2148 beneficiary of a remainder interest and anyone who, in a capacity
2149 other than that of a fiduciary, as defined by Section 91-23-103,
2150 holds a power of appointment, that the trust has been established.

2151 (1) The required notice shall:

2152 (A) Be sent by first class mail or personal
2153 delivery; and

2154 (B) Consist of either a complete copy of the
2155 document establishing the trust together with the trustee's name,



2156 address and telephone number or an abstract of the trust,
2157 whichever the trustee, in the trustee's absolute discretion, may
2158 choose.

2159 (2) The abstract shall contain:

2160 (A) The name, address and telephone number of each
2161 trustee; and

2162 (B) If for a current income beneficiary:

2163 (i) The number of other current income
2164 beneficiaries;

2165 (ii) Whether distributions of income are
2166 required or discretionary; and

2167 (iii) Whether distributions of principal are
2168 permitted and, if so, for what purpose or purposes; and

2169 (C) If for a remainder beneficiary:

2170 (i) The number of other remainder
2171 beneficiaries; and

2172 (ii) The conditions which must be met before
2173 the beneficiary's share is distributable.

2174 (D) If for anyone who, in a capacity other than
2175 that of a fiduciary, as defined by Section 91-23-103, holds a
2176 power of appointment, all of the information required by
2177 subdivisions (b) (2) (A) through (C) necessary or beneficial for
2178 that person to effectively determine whether or not to exercise
2179 that power of appointment.



2180 (c) Upon the termination of an interest of any one (1) or
2181 more of the current income beneficiaries:

2182 (1) The trustee shall similarly notify the income
2183 beneficiaries who are takers of the terminated interest of their
2184 interest by sending or delivering them the notice required in
2185 subsection (b); and

2186 (2) If at that time the period described in subsection
2187 (b) has lapsed, the trustee shall similarly notify anyone who, in
2188 a capacity other than that of a fiduciary, as defined by Section
2189 91-23-103, holds a power of appointment by sending or delivering
2190 to such person the notice required in subsection (b).

2191 (d) A beneficiary may waive the right to a trustee's report
2192 or other information otherwise required to be furnished under this
2193 section. A beneficiary, with respect to future reports and other
2194 information, may withdraw a waiver previously given. Anyone who,
2195 in a capacity other than that of a fiduciary, as defined by
2196 Section 91-23-103, holds a power of appointment has the same power
2197 as provided a beneficiary in this subsection to waive reports and
2198 other information and to withdraw a waiver previously given.

2199 (e) Subsections (a) and (b) shall not apply to the extent
2200 that those provisions are waived or modified in accordance with
2201 Section 91-23-105(d).

2202 (f) Subdivision (a)(1) and subsection (b) do not apply to a
2203 trust created under a trust agreement that became irrevocable
2204 before the date of enactment of this Act. Trust law in effect



2205 prior to the enactment of this Act, regarding the subject matter
2206 of subdivision (a)(1) and subsection (b) shall continue to apply
2207 to those trusts.

2208 (g) If the trustee of a trust is bound by any written
2209 confidentiality restrictions with respect to an asset of a trust,
2210 a trustee may require that any beneficiary who is eligible to
2211 receive information pursuant to this or any other section of this
2212 title about such asset shall agree in writing to be bound by the
2213 confidentiality restrictions that bind the trustee before
2214 receiving such information from the trustee.

2215 (h) A trust advisor, trust protector, or other fiduciary
2216 designated by the terms of the trust shall keep each excluded
2217 fiduciary designated by the terms of the trust reasonably informed
2218 about:

2219 (1) The administration of the trust with respect to any
2220 specific duty or function being performed by the trust advisor,
2221 trust protector, or other fiduciary to the extent that the duty or
2222 function would normally be performed by the excluded fiduciary or
2223 to the extent that providing such information to the excluded
2224 fiduciary is reasonably necessary for the excluded fiduciary to
2225 perform its duties; and

2226 (2) Any other material information that the excluded
2227 fiduciary would be required to disclose to the specified
2228 beneficiaries under subsection (a) regardless of whether the terms
2229 of the trust relieve the excluded fiduciary from providing such



2230 information to qualified beneficiaries. Neither the performance
2231 nor the failure to perform of a trust advisor, trust protector, or
2232 other fiduciary designated by the terms of the trust as provided
2233 in this subsection shall affect the limitation on the liability of
2234 any excluded fiduciary provided by Article 12 of this chapter.

2235 **SECTION 73.** The following shall be codified as Section
2236 91-23-814, Mississippi Code of 1972:

2237 91-23-814. **Exercise of powers over discretionary and other**
2238 **interests; tax savings.** (a) Relative to exercise of powers over
2239 discretionary and other interests:

2240 (1) "Improper motive" means to demonstrate action such
2241 as the following:

2242 (A) A trustee refusing to make or limiting
2243 distributions to beneficiaries other than the trustee due to the
2244 trustee's self-interest when the trustee also holds a beneficial
2245 interest subject to a discretionary interest; or

2246 (B) A trustee making a distribution in excess of
2247 an ascertainable standard to himself or herself as beneficiary
2248 when the trustee is restricted by an ascertainable standard in the
2249 trust.

2250 (2) Unless otherwise provided in the trust:

2251 (A) If the settlor's spouse is named as a
2252 beneficiary, the settlor's spouse is still living and the trust is
2253 classified as a support trust, then the trustee shall consider the



2254 resources of the settlor's spouse, including the settlor's
2255 obligation of support, prior to making a distribution; and

2256 (B) In all other cases, unless otherwise provided
2257 in the trust, the trustee need not consider the beneficiary's
2258 resources in determining whether a distribution should be made.

2259 (b) The following provisions apply only to discretionary
2260 interests:

2261 (1) A discretionary interest is neither a property
2262 interest nor an enforceable right; it is a mere expectancy;

2263 (2) A court may review a trustee's distribution
2264 discretion only if the trustee acts dishonestly, acts with an
2265 improper motive, or fails to act if under a duty to do so;

2266 (3) A reasonableness standard shall not be applied to
2267 the exercise of discretion by the trustee with regard to a
2268 discretionary interest;

2269 (4) Other than for the three circumstances listed in
2270 subdivision (b) (2), a court has no jurisdiction to review the
2271 trustee's discretion or to force a distribution; and

2272 (5) Absent express language in the trust instrument to
2273 the contrary, in the event that the distribution language in a
2274 discretionary interest permits unequal distributions between
2275 beneficiaries or distributions to the exclusion of other
2276 beneficiaries, the trustee may distribute all of the accumulated,
2277 accrued, or undistributed income and principal to one beneficiary
2278 in the trustee's discretion.



2279 (c) The following provisions apply only to mandatory or
2280 support interests:

2281 (1) A beneficiary of a mandatory or a support interest
2282 has an enforceable right to a distribution pursuant to a court's
2283 review;

2284 (2) A trustee's distribution decision may be reviewed
2285 for unreasonableness, dishonesty, improper motivation, or failure
2286 to act if under a duty to do so; and

2287 (3) In the case of a support interest, nothing in this
2288 section shall raise a beneficiary's support interest to the level
2289 of a property interest.

2290 (d) Unless otherwise provided in subsection (f), and unless
2291 the terms of the trust expressly indicate that a rule in this
2292 subsection does not apply:

2293 (1) A person other than a settlor who is a beneficiary
2294 and trustee of a trust that confers on the trustee a power to make
2295 discretionary distributions to or for the trustee's personal
2296 benefit may exercise the power only in accordance with an
2297 ascertainable standard; and

2298 (2) A trustee may not exercise a power to make
2299 discretionary distributions to satisfy a legal obligation of
2300 support that the trustee personally owes another person.

2301 (e) A power that is limited or prohibited by subsection (d)
2302 may be exercised by a majority of the remaining trustees whose
2303 exercise of the power is not so limited or prohibited. If the



2304 power of all trustees is so limited or prohibited, the court may
2305 appoint a special fiduciary with authority to exercise the power.

2306 (f) Subsection (d) shall not apply to:

2307 (1) A power held by the settlor's spouse who is the
2308 trustee of a trust for which a marital deduction, as defined in
2309 Section 2056(b) (5) or 2523(e) of the Internal Revenue Code was
2310 previously allowed;

2311 (2) Any trust during any period that the trust may be
2312 revoked or amended by its settlor; or

2313 (3) A trust if contributions to the trust qualify for
2314 the annual exclusion under Section 2503(c) of the Internal Revenue
2315 Code.

2316 **SECTION 74.** The following shall be codified as Section
2317 91-23-815, Mississippi Code of 1972:

2318 91-23-815. **General powers of trustee.** (a) A trustee,
2319 without authorization by the court, may exercise:

2320 (1) powers conferred by the terms of the trust; and

2321 (2) except as limited by the terms of the trust:

2322 (A) All powers over the trust property which an
2323 unmarried competent owner has over individually owned property;

2324 (B) Any other powers appropriate to achieve the
2325 proper investment, management, and distribution of the trust
2326 property; and

2327 (C) Any other powers conferred by this chapter.



2328 (b) The exercise of a power is subject to the fiduciary
2329 duties prescribed by this Article.

2330 **SECTION 75.** The following shall be codified as Section
2331 91-23-816, Mississippi Code of 1972:

2332 91-23-816. **Specific powers of trustee.** (a) Any references
2333 contained in a will or trust incorporating by reference the powers
2334 enumerated in Section 91-9-101 et seq. will incorporate by
2335 reference the powers contained in this section.

2336 (b) Unless the terms of the instrument expressly provide
2337 otherwise and without limiting the authority conferred by Section
2338 91-23-815, a trustee may:

2339 (1) Collect trust property and accept or reject
2340 additions to the trust property from a settlor or any other
2341 person;

2342 (2) Acquire or sell property, for cash or on credit, at
2343 public or private sale;

2344 (3) Exchange, partition, or otherwise change the
2345 character of trust property;

2346 (4) Deposit trust money in an account in a regulated
2347 financial-service institution;

2348 (5) Borrow money, with or without security, and
2349 mortgage or pledge trust property for a period within or extending
2350 beyond the duration of the trust;

2351 (6) With respect to an interest in a proprietorship,
2352 partnership, limited liability company, business trust,



2353 corporation, or other form of business or enterprise, continue the
2354 business or other enterprise and take any action that may be taken
2355 by shareholders, members, or property owners, including merging,
2356 dissolving, or otherwise changing the form of business
2357 organization or contributing additional capital;

2358 (7) With respect to stocks or other securities,
2359 exercise the rights of an absolute owner, including the right to:

2360 (A) Vote, or give proxies to vote, with or without
2361 power of substitution, or enter into or continue a voting trust
2362 agreement;

2363 (B) Hold a security in the name of a nominee or in
2364 other form without disclosure of the trust so that title may pass
2365 by delivery;

2366 (C) Pay calls, assessments, and other sums
2367 chargeable or accruing against the securities, and sell or
2368 exercise stock subscription or conversion rights; and

2369 (D) Deposit the securities with a depository or
2370 other regulated financial-service institution;

2371 (8) With respect to an interest in real property,
2372 construct, or make ordinary or extraordinary repairs to,
2373 alterations to, or improvements in, buildings or other structures,
2374 demolish improvements, raze existing or erect new party walls or
2375 buildings, subdivide or develop land, dedicate land to public use
2376 or grant public or private easements, and make or vacate plats and
2377 adjust boundaries;



2378 (9) Enter into a lease for any purpose as lessor or
2379 lessee, including a lease or other arrangement for exploration and
2380 removal of natural resources, with or without the option to
2381 purchase or renew, for a period within or extending beyond the
2382 duration of the trust;

2383 (10) Grant an option involving a sale, lease, or other
2384 disposition of trust property or acquire an option for the
2385 acquisition of property, including an option exercisable beyond
2386 the duration of the trust, and exercise an option so acquired;

2387 (11) Insure the property of the trust against damage or
2388 loss and insure the trustee, the trustee's agents, and
2389 beneficiaries against liability arising from the administration of
2390 the trust;

2391 (12) Abandon or decline to administer property of no
2392 value or of insufficient value to justify its collection or
2393 continued administration;

2394 (13) With respect to possible liability for violation
2395 of environmental law:

2396 (A) inspect or investigate property the trustee
2397 holds or has been asked to hold, or property owned or operated by
2398 an organization in which the trustee holds or has been asked to
2399 hold an interest, for the purpose of determining the application
2400 of environmental law with respect to the property;

2401 (B) Take action to prevent, abate, or otherwise
2402 remedy any actual or potential violation of any environmental law



2403 affecting property held directly or indirectly by the trustee,
2404 whether taken before or after the assertion of a claim or the
2405 initiation of governmental enforcement;

2406 (C) Decline to accept property into trust or
2407 disclaim any power with respect to property that is or may be
2408 burdened with liability for violation of environmental law;

2409 (D) Compromise claims against the trust which may
2410 be asserted for an alleged violation of environmental law; and

2411 (E) Pay the expense of any inspection, review,
2412 abatement, or remedial action to comply with environmental law;

2413 (14) Pay or contest any claim, settle a claim by or
2414 against the trust, and release, in whole or in part, a claim
2415 belonging to the trust;

2416 (15) Pay taxes, assessments, compensation of the
2417 trustee and of employees and agents of the trust, and other
2418 expenses incurred in the administration of the trust;

2419 (16) Exercise elections with respect to federal, state,
2420 and local taxes, including allocating capital gains to
2421 distributable net income;

2422 (17) Select a mode of payment under any employee
2423 benefit or retirement plan, annuity, or life insurance payable to
2424 the trustee, exercise rights thereunder, including exercise of the
2425 right to indemnification for expenses and against liabilities, and
2426 take appropriate action to collect the proceeds;



2427 (18) Make loans out of trust property, including loans
2428 to a beneficiary on terms and conditions the trustee considers to
2429 be fair and reasonable under the circumstances, and the trustee
2430 has a lien on future distributions for repayment of those loans;

2431 (19) Pledge trust property to guarantee loans made by
2432 others to the beneficiary;

2433 (20) Appoint a trustee to act in another jurisdiction
2434 with respect to trust property located in the other jurisdiction,
2435 confer upon the appointed trustee all of the powers and duties of
2436 the appointing trustee, require that the appointed trustee furnish
2437 security, and remove any trustee so appointed;

2438 (21) Pay an amount distributable to a beneficiary who
2439 is under a legal disability or who the trustee reasonably believes
2440 is incapacitated, by paying it directly to the beneficiary or
2441 applying it for the beneficiary's benefit, or by:

2442 (A) Paying it to the conservator or guardian of
2443 the beneficiary's estate or, if there is no conservator or
2444 guardian of the beneficiary's estate, to the conservator or
2445 guardian of the beneficiary;

2446 (B) Paying it to the beneficiary's custodian under
2447 the Uniform Transfers to Minors Act, and, for that purpose,
2448 creating a custodianship or custodial trust;

2449 (C) If the trustee does not know of a conservator,
2450 guardian, custodian, or custodial trustee, paying it to an adult



2451 relative or other person having legal or physical care or custody
2452 of the beneficiary, to be expended on the beneficiary's behalf; or

2453 (D) Managing it as a separate fund on the
2454 beneficiary's behalf, subject to the beneficiary's continuing
2455 right to withdraw the distribution;

2456 (22) On distribution of trust property or the division
2457 or termination of a trust, make distributions in divided or
2458 undivided interests, allocate particular assets in proportionate
2459 or disproportionate shares, value the trust property for those
2460 purposes, and adjust for resulting differences in valuation and
2461 basis for income tax purposes;

2462 (23) Resolve a dispute concerning the interpretation of
2463 the trust or its administration by mediation, arbitration, or
2464 other procedure for alternative dispute resolution;

2465 (24) Prosecute or defend an action, claim, or judicial
2466 proceeding in any jurisdiction to protect trust property and the
2467 trustee in the performance of the trustee's duties;

2468 (25) Sign and deliver contracts and other instruments
2469 that are useful to achieve or facilitate the exercise of the
2470 trustee's powers;

2471 (26) On termination of the trust, exercise the powers
2472 appropriate to wind up the administration of the trust and
2473 distribute the trust property to the persons entitled to it;

2474 (27) Employ persons, including attorneys, auditors,
2475 investment advisors or agents, even if they are associated with



2476 the trustee, to advise or assist the trustee in the performance of
2477 his administrative duties; to act without independent
2478 investigation upon their recommendations; and instead of acting
2479 personally, to employ one or more agents to perform any act of
2480 administration, whether or not discretionary; and

2481 (28) (A) A trustee may insure the life of any person
2482 in which the trustee of the trust has an insurable interest as set
2483 forth in Section 91-23-113.

2484 (B) A trustee may retain any life insurance policy
2485 contributed to a trust by a settlor, or purchased by the trustee
2486 upon the request of the settlor, as an asset of the trust without
2487 regard to any lack of diversification caused thereby and without
2488 regard to the terms and conditions of the life insurance policy.
2489 The trustee shall not be liable for lack of diversification to any
2490 beneficiary of a trust for the trustee's retention of the life
2491 insurance policy.

2492 (C) With respect to a life insurance policy owned
2493 by the trust a trustee may:

2494 (i) Borrow funds from any party, including an
2495 insurance company, for the purpose of paying premiums on any
2496 policy of insurance owned by the trust and enter into a "split
2497 dollar" or other similar arrangement;

2498 (ii) Collaterally assign any policy to a
2499 creditor of the trust;



2500 (iii) Exercise any and all rights under any
2501 life insurance policy, including the power to pay, forego or
2502 adjust the amount of any premium payments, adjust the type and
2503 amount of death benefit, receive or apply dividends to premiums or
2504 purchase additional insurance, and allocate policy values among
2505 any subaccounts available under any variable or similar policy;
2506 and

2507 (iv) With the consent of the insured, to sell
2508 any policy to a third party in a life settlement or viatical
2509 settlement transaction.

2510 **SECTION 76.** The following shall be codified as Section
2511 91-23-817, Mississippi Code of 1972:

2512 91-23-817. **Distribution upon termination.** (a) Upon
2513 termination or partial termination of a trust, the trustee may
2514 send to the beneficiaries a proposal for distribution. The right
2515 of any beneficiary to object to the proposed distribution
2516 terminates if the beneficiary does not notify the trustee of an
2517 objection within thirty (30) days after the proposal was sent but
2518 only if the proposal informed the beneficiary of the right to
2519 object and of the time allowed for objection. For the purpose of
2520 determining the date a proposed distribution was sent, where exact
2521 confirmation was unavailable it can be assumed it was received
2522 five (5) days after the date of mailing.

2523 (b) Upon the occurrence of an event terminating or partially
2524 terminating a trust, the trustee shall proceed expeditiously to



2525 distribute the trust property to the persons entitled to it,
2526 subject to the right of the trustee to retain a reasonable reserve
2527 for the payment of debts, expenses, and taxes.

2528 (c) A release by a beneficiary of a trustee from liability
2529 for breach of trust is invalid to the extent:

2530 (1) It was induced by improper conduct of the trustee;
2531 or

2532 (2) The beneficiary, at the time of the release, did
2533 not know of the material facts relating to the alleged breach and
2534 the trustee had actual knowledge of the facts relating to the
2535 alleged breach.

2536 **ARTICLE 9. UNIFORM PRUDENT INVESTOR ACT**

2537 **SECTION 77.** The following shall be codified as Section
2538 91-23-901, Mississippi Code of 1972:

2539 91-23-901. **Prudent Investor Act Incorporated by Reference.**

2540 Title 91, Chapter 9, Article 13, the Mississippi Uniform Prudent
2541 Investor Act, is incorporated in this chapter by reference.

2542 **ARTICLE 10. LIABILITY OF TRUSTEES AND RIGHTS**

2543 **OF PERSONS DEALING WITH TRUSTEE**

2544 **SECTION 78.** The following shall be codified as Section
2545 91-23-1001, Mississippi Code of 1972:

2546 91-23-1001. **Remedies for breach of trust.** (a) A violation
2547 by a trustee of a duty the trustee owes to a beneficiary is a
2548 breach of trust.



2549 (b) To remedy a breach of trust that has occurred or may
2550 occur, the court may:

2551 (1) Compel the trustee to perform the trustee's duties;
2552 (2) Enjoin the trustee from committing a breach of
2553 trust;

2554 (3) Compel the trustee to redress a breach of trust by
2555 paying money, restoring property, or other means;

2556 (4) Order a trustee to account;

2557 (5) Appoint a special fiduciary to take possession of
2558 the trust property and administer the trust;

2559 (6) Suspend the trustee;

2560 (7) Remove the trustee as provided in Section
2561 91-23-706;

2562 (8) Reduce or deny compensation to the trustee;

2563 (9) subject to Section 91-23-1012, void an act of the
2564 trustee, impose a lien or a constructive trust on trust property,
2565 or trace trust property wrongfully disposed of and recover the
2566 property or its proceeds; or

2567 (10) Order any other appropriate relief whether
2568 provided elsewhere in this chapter, available at common law or
2569 under equity principles.

2570 **SECTION 79.** The following shall be codified as Section
2571 91-23-1002, Mississippi Code of 1972:



2572 91-23-1002. **Damages for breach of trust.** (a) A trustee who
2573 commits a breach of trust is liable to the beneficiaries affected
2574 for:

2575 (1) The greater of:

2576 (A) The amount required to restore the value of
2577 the trust property and trust distributions to what they would have
2578 been had the breach not occurred; or

2579 (B) The profit the trustee made by reason of the
2580 breach; and

2581 (2) Any measure of damages otherwise provided by law.

2582 (b) Except as otherwise provided in this subsection (b), if
2583 more than one (1) trustee is liable to the beneficiaries for a
2584 breach of trust, a trustee is entitled to contribution from the
2585 other trustee or trustees. A trustee is not entitled to
2586 contribution if the trustee was substantially more at fault than
2587 another trustee or if the trustee committed the breach of trust in
2588 bad faith or with reckless indifference to the purposes of the
2589 trust or the interests of the beneficiaries. A trustee who
2590 received a benefit from the breach of trust is not entitled to
2591 contribution from another trustee to the extent of the benefit
2592 received.

2593 **SECTION 80.** The following shall be codified as Section
2594 91-23-1003, Mississippi Code of 1972:

2595 91-23-1003. **Damages in absence of breach.** Absent a breach
2596 of trust, a trustee is not liable to a beneficiary for a loss or



2597 depreciation in the value of trust property or for not having made
2598 a profit.

2599 **SECTION 81.** The following shall be codified as Section
2600 91-23-1004, Mississippi Code of 1972:

2601 91-23-1004. **Attorney's fees and costs.** (a) In a judicial
2602 proceeding involving the administration of a trust, the court, as
2603 justice and equity may require, may award costs and expenses,
2604 including reasonable attorney's fees, to any party, to be paid by
2605 another party or from the trust that is the subject of the
2606 controversy.

2607 (b) In a nonjudicial proceeding involving the administration
2608 of a trust, the trustee may pay fees, other reasonable costs and
2609 expenses from trust assets where all of the parties to the
2610 proceeding agree in writing.

2611 (c) In a mediation or arbitration proceeding involving the
2612 administration of a trust, the mediator or arbitrator may award
2613 fees, other reasonable costs and expenses against the assets of
2614 the trust.

2615 **SECTION 82.** The following shall be codified as Section
2616 91-23-1005, Mississippi Code of 1972:

2617 91-23-1005. **Limitation of action against trustee by a**
2618 **beneficiary, a trustee, trust advisor or trust protector.** (a) A
2619 beneficiary may not commence a proceeding against a trustee for
2620 breach of trust more than one (1) year after the date the
2621 beneficiary or a representative of the beneficiary was sent a



2622 report that adequately disclosed the existence of a potential
2623 claim for breach of trust.

2624 (b) A report adequately discloses the existence of a
2625 potential claim for breach of trust if it provides sufficient
2626 information so that the beneficiary or beneficiary's
2627 representative knows of the potential claim or has sufficient
2628 information to be presumed to know of it, or to be put on notice
2629 to inquire into its existence.

2630 (c) If subsection (a) does not apply, a judicial proceeding
2631 by a beneficiary against a trustee for breach of trust must be
2632 commenced within three (3) years after the first to occur of:

- 2633 (1) The removal, resignation, or death of the trustee;
2634 (2) The termination of the beneficiary's interest in
2635 the trust; or
2636 (3) The termination of the trust.

2637 (d) A trustee may not commence a proceeding against a
2638 cotrustee or a former trustee for breach of trust more than one
2639 (1) year after the date the trustee or a representative of the
2640 trustee was sent a report that adequately disclosed facts
2641 indicating the existence of a potential claim for breach of trust.

2642 (e) A report adequately discloses facts indicating the
2643 existence of a potential claim for breach of trust if it provides
2644 sufficient information so that the trustee or the trustee's
2645 representative knows of the potential claim or has sufficient



2646 information to be presumed to know of it, or to be put on notice
2647 to inquire into its existence.

2648 (f) If subsection (d) does not apply, a judicial proceeding
2649 by a trustee against a cotrustee or former trustee for breach of
2650 trust must be commenced within three (3) years after the first to
2651 occur of:

2652 (1) The removal, resignation, or death of the cotrustee
2653 or a former trustee;

2654 (2) The termination of the beneficiary's interest in
2655 the trust; or

2656 (3) The termination of the trust.

2657 (g) A trust advisor or trust protector may not commence a
2658 proceeding against a trustee or a former trustee for breach of
2659 trust more than one (1) year after the date the trust advisor or
2660 trust protector or the respective representative of each was sent
2661 a report that adequately disclosed facts indicating the existence
2662 of a potential claim for breach of trust.

2663 (h) A report adequately discloses facts indicating the
2664 existence of a potential claim for breach of trust if it provides
2665 sufficient information so that the trust advisor or trust
2666 protector or the respective representative of each knows of the
2667 potential claim or has sufficient information to be presumed to
2668 know of it, or to be put on notice to inquire into its existence.

2669 (i) If subsection (g) does not apply, a judicial proceeding
2670 by a trust advisor or trust protector against a trustee or former



2671 trustee for breach of trust must be commenced within three (3)
2672 years after the first to occur of:

2673 (1) The removal, resignation, or death of the trustee
2674 or a former trustee;

2675 (2) The termination of the beneficiary's interest in
2676 the trust; or

2677 (3) The termination of the trust.

2678 (j) Notwithstanding subsections (d)-(i), no trustee, trust
2679 advisor or trust protector, may commence a proceeding against a
2680 trustee or a former trustee if, under Section 91-23-1005(a)
2681 through (c), none of the beneficiaries may commence a proceeding
2682 against the cotrustee or former trustee for such breach of trust.

2683 **SECTION 83.** The following shall be codified as Section
2684 91-23-1006, Mississippi Code of 1972:

2685 91-23-1006. **Reliance on trust instrument.** A trustee who
2686 acts in reasonable reliance on the terms of the trust as expressed
2687 in the trust instrument is not liable to a beneficiary for a
2688 breach of trust to the extent the breach resulted from the
2689 reliance.

2690 **SECTION 84.** The following shall be codified as Section
2691 91-23-1007, Mississippi Code of 1972:

2692 91-23-1007. **Event affecting administration or distribution.**
2693 If the happening of an event, including marriage, divorce,
2694 performance of educational requirements, or death, affects the
2695 administration or distribution of a trust, a trustee who has



2696 exercised reasonable care to ascertain the happening of the event
2697 is not liable for a loss resulting from the trustee's lack of
2698 knowledge.

2699 **SECTION 85.** The following shall be codified as Section
2700 91-23-1008, Mississippi Code of 1972:

2701 91-23-1008. **Exculpation of trustee.** (a) A provision of a
2702 trust relieving a trustee of liability for breach of trust is
2703 unenforceable to the extent that it:

2704 (1) Relieves the trustee of liability for breach of
2705 trust committed in bad faith or with reckless indifference to the
2706 purposes of the trust or the interests of the beneficiaries; or

2707 (2) Was inserted as the result of an abuse by the
2708 trustee of a fiduciary or confidential relationship to the
2709 settlor.

2710 (b) Except for provisions intended to provide protection for
2711 carrying out a stated purpose in the trust instrument, an
2712 exculpatory provision drafted or caused to be drafted by the
2713 trustee is invalid as an abuse of a fiduciary or confidential
2714 relationship unless the trustee proves that the exculpatory
2715 provision is fair under the circumstances and that its existence
2716 and contents were adequately communicated to the settlor.

2717 **SECTION 86.** The following shall be codified as Section
2718 91-23-1009, Mississippi Code of 1972:

2719 91-23-1009. **Beneficiary's consent, release, or ratification.**

2720 A trustee is not liable to a beneficiary for breach of trust if



2721 the beneficiary consented to the conduct constituting the breach,
2722 released the trustee from liability for the breach, or ratified
2723 the transaction constituting the breach, unless:

2724 (1) The consent, release, or ratification of the beneficiary
2725 was induced by improper conduct of the trustee; or

2726 (2) At the time of the consent, release, or ratification,
2727 the beneficiary did not know of the material facts relating to the
2728 breach and the trustee had actual knowledge of the facts relating
2729 to the alleged breach.

2730 **SECTION 87.** The following shall be codified as Section
2731 91-23-1010, Mississippi Code of 1972:

2732 91-23-1010. **Limitation on personal liability of trustee.**

2733 (a) Except as otherwise provided in the contract, a trustee
2734 is not personally liable on a contract properly entered into in
2735 the trustee's fiduciary capacity in the course of administering
2736 the trust if the trustee in the contract disclosed the fiduciary
2737 capacity.

2738 (b) Except as otherwise provided in subsection (a) or (c),
2739 the debts, obligations and liabilities incurred by a trustee by
2740 reason of the ownership, management or control of trust property
2741 in the trustee's fiduciary capacity, shall be enforceable solely
2742 against the trust and its property, without any obligation or
2743 liability personally being borne by any trustee of the trust.



2744 (c) Except as otherwise limited by state law, a trustee is
2745 personally liable for torts committed in the course of
2746 administering a trust only if the trustee is personally at fault.

2747 (d) A claim based on a contract entered into by a trustee in
2748 the trustee's fiduciary capacity, on an obligation arising from
2749 ownership or control of trust property, or on a tort committed in
2750 the course of administering a trust, may be asserted in a judicial
2751 proceeding against the trustee in the trustee's fiduciary
2752 capacity, whether or not the trustee is personally liable for the
2753 claim.

2754 **SECTION 88.** The following shall be codified as Section
2755 91-23-1011, Mississippi Code of 1972:

2756 91-23-1011. **Interest as general partner.** (a) Except as
2757 otherwise provided in subsection (c) or unless personal liability
2758 is imposed in the contract, a trustee who holds an interest as a
2759 general partner in a general or limited partnership is not
2760 personally liable on a contract entered into by the partnership
2761 after the trust's acquisition of the interest if the fiduciary
2762 capacity was disclosed in the contract or in a statement
2763 previously filed pursuant to the Uniform Partnership Act, compiled
2764 in title 79, Chapter 13, or Mississippi Limited Partnership Act,
2765 compiled in Title 79, Chapter 14.

2766 (b) Except as otherwise provided in subsection (c), a
2767 trustee who holds an interest as a general partner is not
2768 personally liable for torts committed by the partnership or for



2769 obligations arising from ownership or control of the interest
2770 unless the trustee is personally at fault.

2771 (c) The immunity provided by this section does not apply if
2772 an interest in the partnership is held by the trustee in a
2773 capacity other than that of trustee.

2774 (d) If the trustee of a revocable trust holds an interest as
2775 a general partner, the settlor is personally liable for contracts
2776 and other obligations of the partnership as if the settlor were a
2777 general partner.

2778 **SECTION 89.** The following shall be codified as Section
2779 91-23-1012, Mississippi Code of 1972:

2780 91-23-1012. **Protection of person dealing with trustee.** (a)
2781 A person other than a beneficiary who in good faith assists a
2782 trustee, or who in good faith and for value deals with a trustee,
2783 without knowledge that the trustee is exceeding or improperly
2784 exercising the trustee's powers is protected from liability as if
2785 the trustee properly exercised the power.

2786 (b) A person other than a beneficiary who in good faith
2787 deals with a trustee is not required to inquire into the extent of
2788 the trustee's powers or the propriety of their exercise.

2789 (c) A person who in good faith delivers assets to a trustee
2790 need not ensure their proper application.

2791 (d) A person other than a beneficiary who in good faith
2792 assists a former trustee, or who in good faith and for value deals
2793 with a former trustee, without knowledge that the trusteeship has



2794 terminated is protected from liability as if the former trustee
2795 were still a trustee.

2796 (e) Comparable protective provisions of other laws relating
2797 to commercial transactions or transfer of securities by
2798 fiduciaries prevail over the protection provided by this section.

2799 **SECTION 90.** The following shall be codified as Section
2800 91-23-1013, Mississippi Code of 1972:

2801 91-23-1013. **Certification of trust.** (a) Instead of
2802 furnishing a copy of the trust instrument to any person to
2803 evidence the existence and validity of the trust, the trustee may
2804 furnish to such person a certification of trust, signed by the
2805 trustee or trustees having signatory authority as identified in
2806 subdivision (a) (5) and attested by a notary public and shall
2807 contain the following:

2808 (1) An affirmation of the current existence of the
2809 trust and the date on which the trust came into existence;

2810 (2) The identity of the settlor or settlors;

2811 (3) The identity and address of the currently acting
2812 trustee or trustees and may contain the identity and address of
2813 the named successor trustee or trustees or a statement that no
2814 successor is named;

2815 (4) The administrative or managerial powers of the
2816 trustee in a pending transaction or relevant to the request;

2817 (5) The revocability or irrevocability of the trust and
2818 the identity of any person holding a power to revoke the trust;



2819 (6) When there are multiple trustees or multiple
2820 successor trustees, the signature authority of the trustees
2821 indicating whether all or less than all of the currently acting
2822 trustees are required to sign in order to exercise various powers
2823 of the trustee;

2824 (7) Where there are successor trustees designated, a
2825 statement detailing the conditions for their succession or a
2826 statement that a third party may rely on the authority of one (1)
2827 or more successors without proof of their succession;

2828 (8) The trust's taxpayer identification number, whether
2829 a social security number or employer identification number, but
2830 only if the trust's identification number is essential to the
2831 transaction for which the request for the trust document is made;

2832 (9) The name in which title to trust property may be
2833 taken; and

2834 (10) A statement that, to the best of the trustee's
2835 knowledge, the trust has not been revoked, modified or amended in
2836 any manner that would cause the representations contained in the
2837 certification of trust to be incorrect.

2838 (b) The certification of trust shall not be required to
2839 contain the dispositive provisions of a trust that set forth the
2840 distribution of the trust estate.

2841 (c) The trustee offering the certification of trust may
2842 provide copies of all or any part of the trust document and
2843 amendments, if any. Nothing in this section is intended to



2844 require or imply an obligation to provide dispositive provisions
2845 of the trust or a copy of the entire trust documents and
2846 amendments.

2847 (d) A person who acts in reliance upon a certification of
2848 trust without knowledge that the representations contained therein
2849 are incorrect is not liable to any person for so acting. A person
2850 who does not have actual knowledge that the facts contained in the
2851 certification of trust are incorrect may assume without inquiry
2852 the existence of the facts contained in the certification. Actual
2853 knowledge shall not be inferred solely from the fact that a copy
2854 of all or part of the trust instrument is held by the person
2855 relying on the trust certification. Nothing contained in this
2856 section shall limit the rights of the beneficiaries of the trust
2857 against the trustee. Any person relying on the certification of
2858 trust shall be indemnified from the assets of the trust to the
2859 extent of the share of the trust attributable to the beneficiary
2860 or beneficiaries bringing any action against the person for any
2861 costs, damage, attorney fees or other expenses incurred in
2862 defending any action against the person arising for the
2863 transaction to which a certification of trust related.

2864 (e) A person's failure to request a certification of trust
2865 does not affect the protections provided that person in this
2866 section. No inference that the person has not acted in good faith
2867 or that the person was negligent may be drawn from the failure of
2868 the person to request a certification of trust. Nothing in this



2869 section is intended to create an implication that a person is
2870 liable for acting in reliance on a certification of trust under
2871 circumstances where the requirements of this section are not
2872 satisfied.

2873 (f) Nothing in this section shall be construed to require a
2874 third party, when presented with a trust certificate, to enter
2875 into a contract with a trustee relating to trust assets or
2876 obligations, or to preclude a third party from demanding as a
2877 precondition to any contract that the trustee provide additional
2878 information in order to clarify any ambiguities or inconsistencies
2879 in the trust certificate.

2880 (g) This section does not limit the right of a person to
2881 obtain a copy of the trust instrument in a judicial proceeding
2882 concerning the trust.

2883 **SECTION 91.** The following shall be codified as Section
2884 91-23-1014, Mississippi Code of 1972:

2885 91-23-1014. **Enforcement of no-contest, in terrorem or**
2886 **forfeiture provisions.** (a) For the purposes of this section,
2887 "no-contest provision" includes a "no-contest provision," "in
2888 terrorem provision" or "forfeiture provision" of a trust
2889 instrument. A "no-contest provision" means a provision that, if
2890 given effect, would reduce or eliminate the interest of any
2891 beneficiary of such trust who, directly or indirectly, initiates
2892 or otherwise pursues:



2893 (1) Any action to contest the validity of the trust or
2894 the terms of the trust;

2895 (2) Any action to set aside or vary the terms of the
2896 trust;

2897 (3) Any action to challenge the acts of the trustee or
2898 other fiduciary of the trust in the performance of the trustee's
2899 or other fiduciary's duties as described in the terms of the
2900 trust; or

2901 (4) Any other act or proceedings to frustrate or defeat
2902 the settlor's intent as expressed in the terms of the trust.

2903 (b) Regardless of whether or not the beneficiary sought,
2904 received or relied upon legal counsel, a no-contest provision
2905 shall be enforceable according to the express terms of the
2906 no-contest provision without regard to the beneficiary's good or
2907 bad faith in taking the action that would justify the complete or
2908 partial forfeiture of the beneficiary's interest in the trust
2909 under the terms of the no-contest provision unless probable cause
2910 exists for the beneficiary taking such action on the grounds of:

2911 (1) Fraud;

2912 (2) Duress;

2913 (3) Revocation;

2914 (4) Lack of testamentary capacity;

2915 (5) Undue influence;

2916 (6) Mistake;

2917 (7) Forgery; or



2918 (8) Irregularity in the execution of the trust
2919 instrument.

2920 (c) Subsection (b) shall not apply to:

2921 (1) Any action brought solely to challenge the acts of
2922 the trustee or other fiduciary of the trust to the extent that the
2923 trustee or other fiduciary has committed a breach of fiduciary
2924 duties or breach of trust;

2925 (2) Any action brought by the trustee or any other
2926 fiduciary serving under the terms of the trust, unless the trustee
2927 or other fiduciary is a beneficiary against whom the no-contest
2928 provision is otherwise enforceable;

2929 (3) Any agreement among the beneficiaries and any other
2930 interested persons in settlement of a dispute or resolution of any
2931 other matter relating to the trust, including without limitation
2932 any nonjudicial settlement agreement;

2933 (4) Any action to determine whether a proposed or
2934 pending motion, petition, or other proceeding constitutes a
2935 contest within the meaning of a no-contest provision;

2936 (5) Any action brought by a beneficiary or on behalf of
2937 any such beneficiary for a construction or interpretation of the
2938 terms of the trust; or

2939 (6) Any action brought by the attorney general for a
2940 construction or interpretation of a charitable trust or a trust
2941 containing a charitable interest if a provision exists in a trust
2942 purporting to penalize a charity or charitable interest for



2943 contesting the trust if probable cause exists for instituting
2944 proceedings.

2945 (d) Pursuant to this section, courts shall enforce the
2946 settlor's intent as reflected in a no-contest provision to the
2947 greatest extent possible.

2948 **ARTICLE 11. MISCELLANEOUS PROVISIONS**

2949 **SECTION 92.** The following shall be codified as Section
2950 91-23-1101, Mississippi Code of 1972:

2951 91-23-1101. **Uniformity of application and construction.** In
2952 applying and construing this chapter, consideration must be given
2953 to the need to promote uniformity of the law with respect to its
2954 subject matter among states that enact it.

2955 **SECTION 93.** The following shall be codified as Section
2956 91-23-1102, Mississippi Code of 1972:

2957 91-23-1102. **Electronic records and signatures.** The
2958 provisions of this chapter governing the legal effect, validity,
2959 or enforceability of electronic records or electronic signatures,
2960 and of contracts formed or performed with the use of such records
2961 or signatures, conform to the requirements of Section 102 of the
2962 Electronic Signatures in Global and National Commerce Act (15 USC
2963 Section 7002) and supersede, modify, and limit the requirements of
2964 the Electronic Signatures in Global and National Commerce Act.

2965 **SECTION 94.** The following shall be codified as Section
2966 91-23-1103, Mississippi Code of 1972:



2967 91-23-1103. **Severability clause.** If any provision of this
2968 chapter or its application to any person or circumstances is held
2969 invalid, the invalidity does not affect other provisions or
2970 applications of this chapter which can be given effect without the
2971 invalid provision or application, and to this end the provisions
2972 of this chapter are severable.

2973 **SECTION 95.** The following shall be codified as Section
2974 91-23-1106, Mississippi Code of 1972:

2975 91-23-1106. **Application to existing relationships.** (a)
2976 Except as otherwise provided in this chapter:

2977 (1) This chapter applies to all trusts created before,
2978 on, or after July 1, 2014;

2979 (2) This chapter applies to all judicial proceedings
2980 concerning trusts commenced on or after July 1, 2014;

2981 (3) This chapter applies to judicial proceedings
2982 concerning trusts commenced before July 1, 2014, unless the court
2983 finds that application of a particular provision of this chapter
2984 would substantially interfere with the effective conduct of the
2985 judicial proceedings or prejudice the rights of the parties, in
2986 which case the particular provision of this chapter does not apply
2987 and the superseded law applies;

2988 (4) Any rule of construction or presumption provided in
2989 this chapter applies to trust instruments executed before July 1,
2990 2014 unless there is a clear indication of a contrary intent in
2991 the terms of the trust; and



2992 (5) An act done before July 1, 2014, is not affected by
2993 this chapter.

2994 (b) If a right is acquired, extinguished, or barred upon the
2995 expiration of a prescribed period that has commenced to run under
2996 any other statute before July 1, 2014, that statute continues to
2997 apply to the right even if it has been repealed or superseded.

2998 **SECTION 96.** The following shall be codified as Section
2999 91-23-1107, Mississippi Code of 1972:

3000 91-23-1107. **Alter ego.** (a) Absent clear and convincing
3001 evidence, no settlor of an irrevocable trust may be deemed to be
3002 the alter ego of a trustee of such trust.

3003 (b) None of the following factors, by themselves or in
3004 combination, may be considered sufficient evidence for a court to
3005 conclude that the settlor controls a trustee, or is the alter ego
3006 of a trustee of such trust:

3007 (1) Any combination of the factors listed in Section
3008 91-23-1108 regarding dominion and control over a trust;

3009 (2) Isolated occurrences where the settlor has signed
3010 checks, made disbursements, or executed other documents related to
3011 such trust as a trustee, a trust advisor or a trust protector,
3012 when in fact the settlor was not such a trustee, trust advisor or
3013 trust protector;

3014 (3) Making any requests for distributions on behalf of
3015 beneficiaries; or



3016 (4) Making any requests to the trustee to hold,
3017 purchase, or sell any trust property.

3018 **SECTION 97.** The following shall be codified as Section
3019 91-23-1108, Mississippi Code of 1972:

3020 91-23-1108. **Dominion and control over a trust.** In the event
3021 a person challenges a settlor's or a beneficiary's influence over
3022 a trust, none of the following factors, alone or in combination,
3023 shall enter into a determination that dominion and control over a
3024 trust exists:

3025 (1) The settlor or a beneficiary is serving as a trustee, a
3026 trust advisor, a trust protector or other fiduciary as described
3027 in Section 91-23-508;

3028 (2) The settlor or a beneficiary holds an unrestricted power
3029 to remove or replace a trustee, a trust advisor, a trust protector
3030 or other fiduciary;

3031 (3) The settlor or a beneficiary is a trust administrator, a
3032 general partner of a partnership, a manager of a limited liability
3033 company, an officer of a corporation, or holds any other
3034 managerial function relative to any type of entity specified in
3035 this subdivision, or relative to any other type of entity not so
3036 specified, and part or all of the trust property consists of an
3037 interest in such entity;

3038 (4) A person related by blood or adoption to the settlor or
3039 a beneficiary is appointed as a trustee, a trust advisor, a trust
3040 protector or other fiduciary;



3041 (5) The settlor's or a beneficiary's agent, accountant,
3042 attorney, financial advisor, or friend is appointed as a trustee,
3043 a trust advisor, a trust protector or other fiduciary;

3044 (6) A business associate is appointed as a trustee, a trust
3045 advisor, a trust protector or other fiduciary;

3046 (7) A beneficiary holds any power of appointment over any or
3047 all of the trust property;

3048 (8) The settlor holds a power to substitute property of
3049 equivalent value for property held by the trust, regardless of
3050 whether such power is:

3051 (A) Held in a fiduciary or nonfiduciary capacity;

3052 (B) Exercisable with or without the approval of any
3053 person in a fiduciary capacity; or

3054 (C) Exercisable with or without the approval of any
3055 person having an interest adverse to such settlor;

3056 (9) A trustee, a trust advisor, a trust protector or other
3057 fiduciary has the power to loan trust property to the settlor for
3058 less than a full and adequate rate of interest or without adequate
3059 security;

3060 (10) Any language relative to the power to make any
3061 distribution provides for any discretion relative to such
3062 distribution;

3063 (11) The trust has only one beneficiary eligible for current
3064 distributions; or



3065 (12) The beneficiary is serving as a cotrustee, or as a
3066 trust advisor or trust protector under Article 12, or as any other
3067 fiduciary.

3068 **SECTION 98.** The following shall be codified as Section
3069 91-23-1109, Mississippi Code of 1972:

3070 91-23-1109. **Protection of special needs trusts and other**
3071 **similar trusts for disabled persons.** Notwithstanding the
3072 provisions of the Mississippi Uniform Trust Code that may
3073 otherwise be applicable to a trust, no provision thereof shall
3074 apply to any special needs trust, supplemental needs trust, or
3075 other similar trust established for a person with a disability as
3076 a beneficiary, including without limitation, any trust established
3077 pursuant to the provisions of 42 USCS Section 1396 (p) (d) (4)A or
3078 C, as amended from time to time, or other similar federal or
3079 state statute, to the extent that such provision would disqualify
3080 such trust beneficiary at any time from eligibility for public
3081 needs-based assistance benefits for which the beneficiary would
3082 otherwise qualify.

3083 **ARTICLE 12. TRUST ADVISORS AND TRUST PROTECTORS**

3084 **SECTION 99.** The following shall be codified as Section
3085 91-23-1201, Mississippi Code of 1972:

3086 91-23-1201. **Powers of trust advisors and trust protectors.**

3087 (a) A trust protector or trust advisor is any person, and may be
3088 a committee of more than one person, other than a trustee, who
3089 under the terms of the trust has a power or duty with respect to a



3090 trust, including but not limited to, one or more of the following
3091 powers:

3092 (1) The power to modify or amend the trust instrument
3093 to achieve favorable tax status or respond to changes in any
3094 applicable federal, state, or other tax law affecting the trust,
3095 including but not limited to, any rulings, regulations, or other
3096 guidance implementing or interpreting such laws;

3097 (2) The power to amend or modify the trust instrument
3098 to take advantage of changes in the rule against perpetuities,
3099 laws governing restraints on alienation, or other state laws
3100 restricting the terms of the trust, the distribution of trust
3101 property, or the administration of the trust;

3102 (3) The power to appoint a successor trust protector or
3103 trust advisor;

3104 (4) The power to review and approve a trustee's trust
3105 reports or accountings;

3106 (5) The power to change the governing law or principal
3107 place of administration of the trust;

3108 (6) The power to remove and replace any trust advisor
3109 or trust protector for the reasons stated in the trust instrument;

3110 (7) The power to remove a trustee, cotrustee, or
3111 successor trustee, for the reasons stated in the trust instrument,
3112 and appoint a successor;

3113 (8) The power to consent to a trustee's or cotrustee's
3114 action or inaction in making distributions to beneficiaries;



3115 (9) The power to increase or decrease any interest of
3116 the beneficiaries in the trust, to grant a power of appointment to
3117 one (1) or more trust beneficiaries, or to terminate or amend any
3118 power of appointment granted in the trust;

3119 (10) The power to perform a specific duty or function
3120 that would normally be required of a trustee or cotrustee;

3121 (11) The power to advise the trustee or cotrustee
3122 concerning any beneficiary;

3123 (12) The power to consent to a trustee's or cotrustee's
3124 action or inaction relating to investments of trust assets;

3125 (13) The power to direct the acquisition, disposition,
3126 or retention of any trust investment;

3127 (14) The power to terminate all or part of a trust;

3128 (15) The power to veto or direct all or part of any
3129 trust distribution;

3130 (16) The power to borrow money with or without
3131 security, and mortgage or pledge trust property for a period
3132 within or extending beyond the duration of the trust;

3133 (17) The power to make loans out of trust property,
3134 including but not limited to, loans to a beneficiary on terms and
3135 conditions, including without interest, considered to be fair and
3136 reasonable under the circumstances;

3137 (18) The power to vote proxies and exercise all other
3138 rights of ownership relative to securities and business entities
3139 held by the trust;



3140 (19) The power to select one (1) or more investment
3141 advisors, managers or counselors, including but not limited to, a
3142 trustee and delegate to them any of its powers; and

3143 (20) The power to direct the trustee with respect to
3144 any additional powers and discretions over investment and
3145 management of trust assets provided in the trust instrument.

3146 (b) The exercise of a power by a trust advisor or a trust
3147 protector shall be exercised in the sole and absolute discretion
3148 of the trust advisor or trust protector and shall be binding on
3149 all other persons.

3150 (c) Any power of a trust advisor or trust protector to
3151 directly or indirectly modify a trust may be granted
3152 notwithstanding the provisions of Sections 91-23-410 through
3153 91-23-412 and 91-23-414.

3154 (d) An excluded fiduciary may continue to follow the
3155 direction of a trust protector or trust advisor upon the
3156 incapacity or death of the grantor of a trust to the extent
3157 provided in the trust instrument.

3158 (e) Notwithstanding anything in this section to the
3159 contrary, no modification, amendment or grant of a power of
3160 appointment with respect to a trust all of whose beneficiaries are
3161 charitable organizations may authorize a trust protector or trust
3162 advisor to grant a beneficial interest in such trust to any
3163 non-charitable interest or purpose.



3164 **SECTION 100.** The following shall be codified as Section
3165 91-23-1202, Mississippi Code of 1972:

3166 91-23-1202. **Trust advisors and trust protectors as**
3167 **fiduciaries.** (a) A trust advisor or trust protector, other than
3168 a beneficiary, is a fiduciary with respect to each power granted
3169 to such trust advisor or trust protector. In exercising any power
3170 or refraining from exercising any power, a trust advisor or trust
3171 protector shall act in good faith and in accordance with the terms
3172 and purposes of the trust and the interests of the beneficiaries.

3173 (b) A trust advisor or trust protector is an excluded
3174 fiduciary with respect to each power granted or reserved
3175 exclusively to any one or more other trustees, trust advisors, or
3176 trust protectors.

3177 **SECTION 101.** The following shall be codified as Section
3178 91-23-1203, Mississippi Code of 1972:

3179 91-23-1203. **Trust advisor and trust protector subject to**
3180 **court jurisdiction.** By accepting appointment to serve as a trust
3181 advisor or trust protector, the trust advisor or the trust
3182 protector submits personally to the jurisdiction of the courts of
3183 this state even if investment advisory agreements or other related
3184 agreements provide otherwise, and the trust advisor or trust
3185 protector may be made a party to any action or proceeding relating
3186 to a decision, action, or inaction of the trust advisor or trust
3187 protector.



3188 **SECTION 102.** The following shall be codified as Section
3189 91-23-1204, Mississippi Code of 1972:

3190 91-23-1204. **No duty to review actions of trustee, trust**

3191 **advisor, or trust protector.** (a) Whenever, pursuant to the terms
3192 of a trust, an excluded fiduciary is to follow the direction of a
3193 trustee, trust advisor, or trust protector with respect to
3194 investment decisions, distribution decisions, or other decisions
3195 of the nonexcluded fiduciary, then, except to the extent that the
3196 terms of the trust provide otherwise, the excluded fiduciary shall
3197 have no duty to:

3198 (1) Review, evaluate, perform investment reviews,
3199 suitability reviews, inquiries, or investigations, or in any other
3200 way monitor the conduct of the trustee, trust advisor, or trust
3201 protector;

3202 (2) Make recommendations or evaluations or in any way
3203 provide advice to the trustee, trust advisor, or trust protector
3204 or consult with the trustee, trust advisor, or trust protector; or

3205 (3) Communicate with or warn or apprise any beneficiary
3206 or third party concerning instances in which the excluded
3207 fiduciary would or might have exercised the excluded fiduciary's
3208 own discretion in a manner different from the manner directed by
3209 the trustee, trust advisor, or trust protector.

3210 (b) Absent provisions in the trust instrument to the
3211 contrary, the actions of the excluded fiduciary pertaining to
3212 matters within the scope of the trustee, trust advisor, or trust



3213 protector's authority, including but not limited to, confirming
3214 that the trustee, trust advisor, or trust protector's directions
3215 have been carried out and recording and reporting actions taken at
3216 the trustee, trust advisor, or trust protector's direction or
3217 other information pursuant to Section 91-23-813, shall be deemed
3218 to be administrative actions taken by the excluded fiduciary
3219 solely to allow the excluded fiduciary to perform those duties
3220 assigned to the excluded fiduciary under the terms of the trust;
3221 such administrative actions, as well as any communications made by
3222 the excluded fiduciary to the trust advisor, trust protector or
3223 any of their agents or persons they have selected to provide
3224 services to the trust, shall not be deemed to constitute an
3225 undertaking by the excluded fiduciary to monitor the trustee,
3226 trust advisor, or trust protector or otherwise participate in
3227 actions within the scope of the trustee, trust advisor, or trust
3228 protector's authority.

3229 **SECTION 103.** The following shall be codified as Section
3230 91-23-1205, Mississippi Code of 1972:

3231 91-23-1205. **Fiduciary's liability for action or inaction of**
3232 **trustee, trust advisor, and trust protector.** An excluded
3233 fiduciary is not liable, either individually or as a fiduciary,
3234 for:

3235 (1) Any loss resulting from compliance with a direction of a
3236 trustee, trust advisor or trust protector, including but not
3237 limited to, any loss from the trustee, trust advisor or trust



3238 protector breaching fiduciary responsibilities or acting beyond
3239 the trustee's, trust advisor's or trust protector's scope of
3240 authority;

3241 (2) Any loss resulting from any action or inaction of a
3242 trustee, trust advisor, or trust protector; or

3243 (3) Any loss that results from the failure of a trustee,
3244 trust advisor, or trust protector to take any action proposed by
3245 the excluded fiduciary where such action requires the
3246 authorization of the trustee, trust advisor, or trust protector,
3247 provided that an excluded fiduciary who had a duty to propose such
3248 action timely sought but failed to obtain the authorization.

3249 **SECTION 104.** The following shall be codified as Section
3250 91-23-1206, Mississippi Code of 1972:

3251 91-23-1206. **Limitation of action against trust advisor or**
3252 **trust protector.** (a) A beneficiary may not commence a proceeding
3253 against a trust advisor or trust protector for breach of trust
3254 more than one (1) year after the date the beneficiary or a
3255 representative of the beneficiary was sent a report that
3256 adequately disclosed facts indicating the existence of a potential
3257 claim for breach of trust.

3258 (b) A report adequately discloses facts indicating the
3259 existence of a potential claim for breach of trust if it provides
3260 sufficient information so that the beneficiary or the
3261 beneficiary's representative knows of the potential claim or has



3262 sufficient information to be presumed to know of it, or to be put
3263 on notice to inquire into its existence.

3264 (c) If subsection (a) does not apply, a judicial proceeding
3265 by a beneficiary against a trust advisor or trust protector for
3266 breach of trust must be commenced within three (3) years after the
3267 first to occur of:

3268 (1) The removal, resignation, or death of the trust
3269 advisor or trust protector;

3270 (2) The termination of the beneficiary's interest in
3271 the trust; or

3272 (3) The termination of the trust.

3273 (d) A trustee may not commence a proceeding against a trust
3274 advisor or trust protector for breach of trust more than one (1)
3275 year after the date the trustee or a representative of the trustee
3276 was sent a report that adequately disclosed facts indicating the
3277 existence of a potential claim for breach of trust.

3278 (e) A report adequately discloses facts indicating the
3279 existence of a potential claim for breach of trust if it provides
3280 sufficient information so that the trustee or the trustee's
3281 representative knows of the potential claim or has sufficient
3282 information to be presumed to know of it, or to be put on notice
3283 to inquire into its existence.

3284 (f) If subsection (d) does not apply, a judicial proceeding
3285 by a trustee against a trust advisor or trust protector for breach



3286 of trust must be commenced within three (3) years after the first
3287 to occur of:

3288 (1) The removal, resignation, or death of the trust
3289 advisor or trust protector;

3290 (2) The termination of the beneficiary's interest in
3291 the trust; or

3292 (3) The termination of the trust.

3293 (g) A trust advisor or trust protector may not commence a
3294 proceeding against another trust advisor or another trust
3295 protector for breach of trust more than one (1) year after the
3296 date the trust advisor or trust protector or the respective
3297 representative of each was sent a report that adequately disclosed
3298 facts indicating the existence of a potential claim for breach of
3299 trust.

3300 (h) A report adequately discloses facts indicating the
3301 existence of a potential claim for breach of trust if it provides
3302 sufficient information so that the trust advisor or trust
3303 protector or the respective representative of each knows of the
3304 potential claim or has sufficient information to be presumed to
3305 know of it, or to be put on notice to inquire into its existence.

3306 (i) If subsection (g) does not apply, a judicial proceeding
3307 by a trust advisor or trust protector against another trust
3308 advisor or another trust protector for breach of trust must be
3309 commenced within three (3) years after the first to occur of:



3310 (1) The removal, resignation, or death of the other
3311 trust advisor or other trust protector;

3312 (2) The termination of the beneficiary's interest in
3313 the trust; or

3314 (3) The termination of the trust.

3315 (j) Notwithstanding subsections (d)-(i), no trustee, trust
3316 advisor or trust protector, may commence a proceeding against a
3317 trust advisor or trust protector or another trust advisor or
3318 another trust protector if, under either subsections (a)-(c) or
3319 Section 91-23-1005(a)-(c), none of the beneficiaries may commence
3320 a proceeding against the trust advisor or trust protector for such
3321 breach of trust.

3322 **SECTION 105.** The codifier is directed to codify Sections 1
3323 through 104 of this act as Title 91, Chapter 23, Article 5,
3324 Mississippi Code of 1972.

3325 **SECTION 106.** Sections 91-9-1, 91-9-2, 91-9-3, 91-9-5, 91-9-7
3326 and 91-9-9, Mississippi Code of 1972, which constitute Title 91,
3327 Chapter 9, Article 1, Trusts - General Provisions; and Sections
3328 91-9-101, 91-9-103, 91-9-105, 91-9-107, 91-9-109, 91-9-111,
3329 91-9-113, 91-9-115, 91-9-117 and 91-9-119, Mississippi Code of
3330 1972, which constitute Title 91, Chapter 9, Article 3, Uniform
3331 Trustee Powers; and Sections 91-9-201, 91-9-203, 91-9-205,
3332 91-9-207, 91-2-209, 91-9-211 and 91-9-213, Mississippi Code of
3333 1972, which constitute Title 91, Chapter 9, Article 5, Resignation
3334 And Succession of Trustees; and Sections 91-9-301, 91-9-303 and



3335 91-9-305, which constitute Title 91, Chapter 9, Article 7, Removal
3336 of Trustees, are repealed.

3337 **SECTION 107.** This act shall take effect and be in force from
3338 and after July 1, 2014.

