

By: Senator(s) Doty

To: Judiciary, Division A

SENATE BILL NO. 2211
(As Passed the Senate)

1 AN ACT TO MAKE TECHNICAL AMENDMENTS TO THE MISSISSIPPI
2 UNIFORM TRUST CODE AND THE MISSISSIPPI QUALIFIED DISPOSITION IN
3 TRUST ACT; TO AMEND SECTION 91-8-103, MISSISSIPPI CODE OF 1972, TO
4 CLARIFY AND COORDINATE THE STATUTORY PROVISIONS CONCERNING
5 SETTLORS, BENEFICIARY SURROGATES, TRUST PROTECTORS, TRUST ADVISORS
6 AND CERTAIN REPRESENTATIVES; TO AMEND SECTION 91-8-105,
7 MISSISSIPPI CODE OF 1972, TO CLARIFY THAT THERE ARE THREE
8 ALTERNATIVE METHODS BY WHICH A TRUSTEE'S DUTY TO INFORM AND REPORT
9 MAY BE WAIVED; TO AMEND SECTION 91-8-303, MISSISSIPPI CODE OF
10 1972, TO CLARIFY AND COORDINATE THE STATUTORY PROVISIONS
11 CONCERNING SETTLORS, BENEFICIARY SURROGATES, TRUST PROTECTORS,
12 TRUST ADVISORS AND CERTAIN REPRESENTATIVES; TO AMEND SECTION
13 91-8-401, MISSISSIPPI CODE OF 1972, TO CLARIFY THAT A TRANSFER IN
14 THE NAME OF THE TRUST IS LEGALLY SUFFICIENT; TO AMEND SECTION
15 91-8-407, MISSISSIPPI CODE OF 1972, TO CLARIFY THAT SUBSTANTIAL
16 COMPLIANCE WITH THE REQUIREMENTS FOR A MEMORANDUM OF TRUST IS
17 SUFFICIENT TO CONSTITUTE CONSTRUCTIVE NOTICE; TO AMEND SECTION
18 91-8-409, MISSISSIPPI CODE OF 1972, TO CLARIFY THE ENFORCEMENT OF
19 A NONCHARITABLE TRUST WITHOUT AN ASCERTAINABLE BENEFICIARY; TO
20 AMEND SECTION 91-8-411, MISSISSIPPI CODE OF 1972, TO CLARIFY THE
21 PARTICIPATION OF THE QUALIFIED BENEFICIARIES IN MODIFICATION OR
22 TERMINATION BY CONSENT; TO AMEND SECTION 91-8-703, MISSISSIPPI
23 CODE OF 1972, TO CLARIFY THAT TRUST ADVISORS AND TRUST PROTECTORS
24 HAVE A DUTY TO KEEP OTHER FIDUCIARIES INFORMED; TO AMEND SECTION
25 91-8-814, MISSISSIPPI CODE OF 1972, TO CLARIFY THAT THE TRUSTEE IS
26 TO CONSIDER THE SPOUSE'S RESOURCES WHEN MAKING A DISCRETIONARY
27 DISTRIBUTION WHEN THE SETTLOR IS STILL LIVING; TO AMEND SECTION
28 91-8-1012, MISSISSIPPI CODE OF 1972, TO CLARIFY THAT A THIRD PARTY
29 IS PROTECTED IN THE ABSENCE OF ACTUAL KNOWLEDGE THAT A TRUSTEE IS
30 IMPROPERLY EXERCISING POWER; TO AMEND SECTION 91-8-1201,
31 MISSISSIPPI CODE OF 1972, TO EXPAND THE POWERS OF A TRUST
32 PROTECTOR OR TRUST ADVISOR TO COORDINATE WITH ARTICLE 3, CHAPTER
33 8, TITLE 91, MISSISSIPPI CODE OF 1972, DEALING WITH REPRESENTATION
34 OF BENEFICIARIES AND WITH ARTICLE 8, CHAPTER 8, TITLE 91,



35 MISSISSIPPI CODE OF 1972, DEALING WITH THE DUTIES AND POWERS OF A
36 TRUSTEE UNDER THE UNIFORM TRUST CODE; TO AMEND SECTIONS 91-9-503,
37 91-9-505 AND 91-9-507, MISSISSIPPI CODE OF 1972, TO RECOGNIZE AND
38 CREATE AN EXCEPTION FOR QUALIFIED DISPOSITIONS IN TRUST; TO CREATE
39 NEW SECTION 91-9-509, MISSISSIPPI CODE OF 1972, TO RECODIFY A
40 PROVISION OF ARTICLE 11, CHAPTER 9, TITLE 91, MISSISSIPPI CODE OF
41 1972, THE FAMILY TRUST PRESERVATION ACT OF 1998, REPEALED IN THE
42 2014 REGULAR SESSION AND TO INCLUDE AN EXCEPTION FOR QUALIFIED
43 DISPOSITIONS IN TRUST; TO AMEND SECTION 91-9-703, MISSISSIPPI CODE
44 OF 1972, TO REVISE THE DEFINITION OF INVESTMENT ADVISOR AND
45 CLARIFY THAT THE INVESTMENT ADVISOR SHOULD NOT BE INVOLVED IN
46 DISTRIBUTION DECISIONS; TO AMEND SECTION 91-9-707, MISSISSIPPI
47 CODE OF 1972, TO CLARIFY A CREDITOR'S ABILITY TO BRING AN ACTION
48 AGAINST PROPERTY SUBJECT TO A QUALIFIED DISPOSITION IN THE ABSENCE
49 OF INTENT TO DEFRAUD THE SPECIFIC CREDITOR; TO AMEND SECTION
50 91-8-1013, MISSISSIPPI CODE OF 1972, TO CORRECT A TYPOGRAPHICAL
51 ERROR IN AN INTERNAL REFERENCE IN THE MISSISSIPPI UNIFORM TRUST
52 CODE; AND FOR RELATED PURPOSES.

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

54 **SECTION 1.** Section 91-8-103, Mississippi Code of 1972, is
55 amended as follows:

56 91-8-103. In this chapter:

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

59 (2) "Ascertainable standard" means a standard relating
60 to an individual's health, education, support, or maintenance
61 within the meaning of Section 2041(b)(1)(A) or 2514(c)(1) of the
62 Internal Revenue Code of 1986, as in effect on July 1, 2014, or as
63 later amended.

64 (3) "Beneficial interest" means a distribution interest
65 or a remainder interest; provided, however, a beneficial interest
66 specifically excludes a power of appointment or a power reserved
67 by a settlor.

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



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

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

73 (5) "Beneficiary surrogate" means a person, including a
74 trust protector or trust advisor, other than a trustee, designated
75 by the settlor in the trust instrument or in a writing delivered
76 to the trustee, or designated in a writing delivered to the
77 trustee by a trust protector or trust advisor * * * with power
78 under the terms of the trust instrument to receive notices,
79 information, and reports otherwise required to be provided to a
80 beneficiary under Section 91-8-813(a) and (b), or to represent a
81 beneficiary under Section 91-8-303(8).

82 (6) "Charitable trust" means a trust, or portion of a
83 trust, created for a charitable purpose described in Section
84 91-8-405(a).

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

88 (8) "Directed trust" means a trust where through the
89 terms of the trust, one or more persons are given the authority to
90 direct or consent to a fiduciary's actual or proposed investment
91 decision, distribution decision, or any other decision of the
92 fiduciary.

93 (9) "Distribution interest" means:



94 (A) An interest, other than a remainder interest,
95 held by an eligible distributee or permissible distributee under a
96 trust and may be a current distribution interest or a future
97 distribution interest;

98 (B) A distribution interest is classified as
99 either a mandatory interest, a support interest or a discretionary
100 interest; and although not the exclusive means to create each such
101 respective distribution interest, absent clear and convincing
102 evidence to the contrary, use of the example language accompanying
103 the following definitions of each such respective distribution
104 interest results in the indicated classification of distribution
105 interest:

106 (i) A mandatory interest means a distribution
107 interest in which the timing of any distribution must occur within
108 one (1) year from the date the right to the distribution arises
109 and the trustee has no discretion in determining whether a
110 distribution shall be made or the amount of such distribution;
111 example distribution language indicating a mandatory interest
112 includes, but is not limited to:

113 a. All income shall be distributed to a
114 named beneficiary; or

115 b. One Hundred Thousand Dollars
116 (\$100,000.00) a year shall be distributed to a named beneficiary;

117 (ii) A support interest means a distribution
118 interest that is not a mandatory interest but still contains



119 mandatory language such as "shall make distributions" and is
120 coupled with a standard capable of judicial interpretation;
121 example distribution language indicating a support interest
122 includes, but is not limited to:

123 a. The trustee shall make distributions
124 for health, education, maintenance, and support;

125 b. Notwithstanding the distribution
126 language used, if a trust instrument containing such distribution
127 language specifically provides that the trustee exercise
128 discretion in a reasonable manner with regard to a discretionary
129 interest, then notwithstanding any other provision of this
130 subparagraph defining distribution interests, the distribution
131 interest shall be classified as a support interest;

132 (iii) A discretionary interest means any
133 interest that is not a mandatory or a support interest and is any
134 distribution interest where a trustee has any discretion to make
135 or withhold a distribution; example distribution language
136 indicating a discretionary interest includes, but is not limited
137 to:

138 a. The trustee may, in the trustee's
139 sole and absolute discretion, make distributions for health,
140 education, maintenance, and support;

141 b. The trustee, in the trustee's sole
142 and absolute discretion, shall make distributions for health,
143 education, maintenance, and support;



144 c. The trustee may make distributions
145 for health, education, maintenance, and support;

146 d. The trustee shall make distributions
147 for health, education, maintenance, and support; however, the
148 trustee may exclude any of the beneficiaries or may make unequal
149 distributions among them; or

150 e. The trustee may make distributions
151 for health, education, maintenance, support, comfort, and general
152 welfare;

153 f. A discretionary interest may also be
154 evidenced by:

155 1. Permissive distribution language
156 such as "may make distributions";

157 2. Mandatory distribution language
158 that is negated by the discretionary distribution language
159 contained in the trust such as "the trustee shall make
160 distributions in the trustee's sole and absolute discretion";

161 g. An interest that includes mandatory
162 distribution language such as "shall" but is subsequently
163 qualified by discretionary distribution language shall be
164 classified as a discretionary interest and not as a support or a
165 mandatory interest;

166 (C) (i) To the extent a trust contains
167 distribution language indicating the existence of any combination
168 of a mandatory, support and discretionary interest, that combined



169 interest of the trust shall be divided and treated separately as
170 follows:

171 a. The trust shall be a mandatory
172 interest only to the extent of the mandatory distribution
173 language;

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

176 c. The remaining trust property shall be
177 held as a discretionary interest;

178 (ii) For purposes of this subparagraph (C), a
179 support interest that includes mandatory distribution language
180 such as "shall" but is subsequently qualified by discretionary
181 distribution language, shall be classified as a discretionary
182 interest and not as a support interest.

183 (10) "Environmental law" means a federal, state, or
184 local law, rule, regulation, or ordinance relating to protection
185 of the environment.

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

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

191 (B) The power or duty is granted or reserved to
192 another person.

193 (12) "Fiduciary" means:



194 (A) A trustee, conservator, guardian, agent under
195 any agency agreement or other instrument, an executor, personal
196 representative or administrator of a decedent's estate, or any
197 other party, including a trust advisor or a trust protector, who
198 is acting in a fiduciary capacity for any person, trust, or
199 estate;

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

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

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

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

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

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



218 (17) "Person" means an individual, corporation,
219 business trust, estate, trust, partnership, limited liability
220 company, association, joint venture, government; governmental
221 subdivision, agency, or instrumentality; public corporation, or
222 any other legal or commercial entity.

223 (18) "Power of appointment" means:

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

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

230 (19) "Power of withdrawal" means a presently
231 exercisable general power of appointment other than a power: (A)
232 exercisable by a trustee and limited by an ascertainable standard;
233 or (B) exercisable by another person only upon consent of the
234 trustee or a person holding an adverse interest.

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

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

240 (A) Is a distributee or permissible distributee of
241 trust income or principal;



242 (B) Would be a distributee or permissible
243 distributee of trust income or principal if the interests of the
244 distributees described in subparagraph (A) terminated on that date
245 without causing the trust to terminate; or

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

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

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

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

256 (25) "Settlor" means a person, including a testator,
257 who creates, or contributes property to, a trust. If more than
258 one (1) person creates or contributes property to a trust, each
259 person is a settlor of the portion of the trust property
260 attributable to that person's contribution except to the extent
261 another person has the power to revoke or withdraw that portion.

262 (26) "Spendthrift provision" means a term of a trust
263 which restrains both voluntary and involuntary transfer of a
264 beneficiary's interest.

265 (27) "State" means a state of the United States, the
266 District of Columbia, Puerto Rico, the United States Virgin



267 Islands, or any territory or insular possession subject to the
268 jurisdiction of the United States. The term includes an Indian
269 tribe or band recognized by federal law or formally acknowledged
270 by a state.

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

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

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

281 (31) "Trust instrument" means an instrument executed by
282 the settlor that contains terms of the trust, including any
283 amendments thereto.

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

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

288 **SECTION 2.** Section 91-8-105, Mississippi Code of 1972, is
289 amended as follows:

290 91-8-105. (a) Except as otherwise provided in the terms of
291 the trust, this chapter governs the duties and powers of a trustee



292 or any other fiduciary under this chapter, relations among
293 trustees and such other fiduciaries, and the rights and interests
294 of a beneficiary. The terms of a trust may expand, restrict,
295 eliminate, or otherwise vary the duties and powers of a trustee,
296 any such other fiduciary, relations among any of them, and the
297 rights and interests of a beneficiary; however, nothing contained
298 in this subsection shall be construed to override or nullify the
299 provisions of subsection (b). The rule of statutory construction
300 that statutes in derogation of the common law are to be strictly
301 construed shall have no application to this section. Except as
302 restricted by subsection (b), pursuant to this section, courts
303 shall give maximum effect to the principal of freedom of
304 disposition and to the enforceability of trust instruments.

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

307 (1) The requirements for creating a trust;

308 (2) The duty of a trustee to act in good faith in
309 accordance with the terms and purposes of the trust and the
310 interests of the beneficiaries;

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

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



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

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

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

326 (8) Subject to subsection (d), the duty under Section
327 91-8-813(b) to notify beneficiaries of an irrevocable trust
328 (including anyone who holds * * * a power of appointment) who have
329 attained twenty-five (25) years of age that the trust has been
330 established as set forth in that Section 91-8-813(b);

331 (9) Subject to subsection (d), the duty under Section
332 91-8-813(a) (1) and (2) to keep the beneficiaries (including anyone
333 who holds a power of appointment) informed and to respond to the
334 request of a beneficiary of an irrevocable trust for trustee's
335 reports and other information reasonably related to the
336 administration of the trust;

337 (10) The effect of an exculpatory term under Section
338 91-8-1008;

339 (11) The rights under Sections 91-8-1010 through
340 91-8-1013 of a person other than a trustee or beneficiary;



341 (12) Periods of limitation for commencing a judicial
342 proceeding;

343 (13) The power of the court to take such action and
344 exercise such jurisdiction as may be necessary in the interests of
345 justice; and

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

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

352 (d) Notwithstanding subsection (b) (8) and (9) of this
353 section, the duties of a trustee to give notice, information and
354 reports under Section 91-8-813(a) and (b) may be waived or
355 modified in the trust instrument or by the settlor of the trust,
356 or a trust protector or trust advisor that holds the power to so
357 direct, directs otherwise in a writing delivered to the trustee in
358 any of the following ways:

359 (1) By waiving or modifying such duties as to all
360 qualified beneficiaries during the lifetime of the settlor or the
361 settlor's spouse;

362 (2) By specifying a different age at which a
363 beneficiary or class of beneficiaries must be notified under
364 Section 91-8-813(b); * * * or



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

369 **SECTION 3.** Section 91-8-303, Mississippi Code of 1972, is
370 amended as follows:

371 91-8-303. To the extent there is no material conflict of
372 interest between the representative and the person represented or
373 among those being represented with respect to a particular
374 question or dispute:

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

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

380 (3) An agent having authority to act with respect to
381 the particular question or dispute may represent and bind the
382 principal;

383 (4) A trustee may represent and bind the beneficiaries
384 of the trust;

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

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



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

393 (8) A person designated by the settlor either in the
394 trust instrument or in a writing delivered to the trustee, or
395 designated in a writing delivered to the trustee by a trust
396 protector or trust advisor with power under the terms of the trust
397 instrument to represent the beneficiaries of the trust, may
398 represent and bind * * * the beneficiaries.

399 **SECTION 4.** Section 91-8-401, Mississippi Code of 1972, is
400 amended as follows:

401 91-8-401. A trust may be created by:

402 (1) Transfer of property to another person as trustee
403 or a transfer in the name of the trust during the settlor's
404 lifetime or by will or other disposition taking effect upon the
405 settlor's death;

406 (2) Declaration by the owner of property that the owner
407 holds identifiable property as trustee;

408 (3) Exercise of a power of appointment in favor of a
409 trustee; * * *

410 (4) A court pursuant to its statutory or equitable
411 powers; or

412 (5) * * * By an agent or attorney-in-fact under a power
413 of attorney that:



414 (A) Expressly grants authority to create the
415 trust; or

416 (B) * * * Grants the agent or attorney-in-fact the
417 authority to act in the management and disposition of the
418 principal's property that is as broad or comprehensive as the
419 principal could exercise for himself or herself and that does not
420 expressly exclude the authority to create a trust. An agent or
421 attorney-in-fact may file a petition for the court to determine
422 whether a power of attorney described in this section grants the
423 agent or attorney-in-fact authority that is as broad or
424 comprehensive as that which the principal could exercise for
425 himself or herself.

426 **SECTION 5.** Section 91-8-407, Mississippi Code of 1972, is
427 amended as follows:

428 91-8-407. (a) Except as provided in subsection (b) and
429 except as required by a statute other than this chapter, a trust
430 need not be evidenced by a trust instrument, but the creation of
431 an oral trust and its terms may be established only by clear and
432 convincing evidence.

433 (b) (1) No trust of or in any real property can be created
434 except by a written instrument signed by the party who declares or
435 creates such trust (the "settlor"), or by his last will, in
436 writing. Every writing declaring or creating a trust in real
437 property, other than a last will, may be acknowledged and proved
438 as other writing and filed for record with the clerk of the



439 chancery court in which the real property, or part of it, is
440 located, and the filing shall serve as constructive notice of the
441 existence and terms of the trust from and after filing.

442 (2) In lieu of filing the trust instrument or other
443 writing declaring or creating a trust in real property, there may
444 be filed with the clerk of the chancery court in which the real
445 property, or part of it, is located a memorandum of trust signed
446 by the settlor, trustee, or successor trustee and acknowledged or
447 proved as other writings * * * and the filing of the memorandum of
448 trust shall serve as constructive notice of the existence and
449 terms of the trust from and after filing. The memorandum shall
450 contain substantially all of the following information:

451 (A) The name of the trust;

452 (B) The street and mailing address of the office,
453 and the name and street and mailing address and telephone number
454 of the trustee;

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

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

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

461 (F) The general powers granted to the trustee,
462 which may be by reference to the statutory powers granted to the
463 trustee under the terms of the trust instrument.



464 The memorandum may also contain the name and street and
465 mailing address and telephone number of any successor
466 trustee * * *. The memorandum of trust may be filed with the
467 clerk of the appropriate chancery court either before or after a
468 deed of conveyance of real property to the trust or trustee, in
469 his capacity as such. The memorandum need not comply with
470 subparagraph (D) if filed before or contemporaneously with a
471 conveyance of any real property to the trust or trustee in his
472 capacity as such, and need not be amended upon a subsequent
473 conveyance of real property to the trust or trustee in his
474 capacity as such, so long as the deed of conveyance is recorded in
475 the appropriate county, and the recording of the deed of
476 conveyance to the trust or trustee, as the case may be, shall
477 constitute compliance with subparagraph (D). In addition, the
478 deed of conveyance may also serve as a memorandum of trust, or an
479 amendment to the memorandum of trust, as the case may be, so long
480 as the deed of conveyance contains the information required for a
481 memorandum of trust as set forth in this subsection (b).

482 (3) The settlor may amend the memorandum if the trust
483 to which it relates is subject to a power of amendment or
484 revocation by the settlor; otherwise, only the then-serving
485 trustee may amend the memorandum. The memorandum of amendment
486 shall set forth the amendment to the original memorandum with
487 particularity. The amended memorandum of trust may be made
488 effective on a future date, which must be a date certain. The



489 memorandum of amendment may be signed by the creator, trustee or
490 successor trustee, as the case may be, and acknowledged or proved
491 as other writings and filed for record with the clerk of the
492 chancery court where the original memorandum is of record. The
493 filing of the memorandum of amendment shall serve as constructive
494 notice of the existence and terms of the amendment from and after
495 filing.

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

499 (5) The provisions of this subsection (b) shall have no
500 application to trusts of personal property, * * * or to any trust
501 arising or resulting by implication of law out of a conveyance of
502 land. The failure to file a copy of the trust instrument,
503 memorandum or deed of conveyance shall not affect the validity of
504 the trust or the trust instrument.

505 (6) A certificate of trust containing the information
506 set forth in Section 91-9-7 that was filed before July 1, 2014,
507 shall be considered constructive notice of the existence and terms
508 of the trust from and after its filing, and the filing of a
509 memorandum of trust under Section 91-8-407(b) shall not be
510 necessary.

511 (c) (1) All property originally brought into the trust or
512 subsequently acquired by purchase or otherwise, on account of the
513 trust, is trust property.



514 (2) Unless the contrary intention appears, property
515 acquired with trust funds is trust property.

516 (3) Any estate in real property may be acquired in the
517 trust name. Title so acquired can be conveyed in the trust name
518 or by the trustees, as trustees of the trust.

519 (4) A conveyance to a trust in the trust name, though
520 without words of inheritance, passes the entire interest in the
521 property of the grantor unless the language of the conveyance
522 reflects an intent to the contrary.

523 **SECTION 6.** Section 91-8-409, Mississippi Code of 1972, is
524 amended as follows:

525 91-8-409. Except as otherwise provided in Section 91-8-408,
526 Section 41-43-51 or by another statute, the following rules apply:

527 (1) A trust may be created for a noncharitable purpose
528 without a definite or definitely ascertainable beneficiary or for
529 a noncharitable but otherwise valid purpose to be selected by the
530 trustee. The trust may not be enforced for more than twenty-one
531 (21) years;

532 (2) A trust authorized by this section may be enforced
533 by a person appointed under the terms of the trust, or if no
534 person is so appointed, by a person appointed by the court.

535 (3) Property of a trust authorized by this section may
536 be applied only to its intended use, except to the extent the
537 court determines that the value of the trust property exceeds the
538 amount required for the intended use. Except as otherwise



539 provided in the terms of the trust, property not required for the
540 intended use must be distributed to the settlor, if then living,
541 otherwise to the settlor's successors in interest.

542 **SECTION 7.** Section 91-8-411, Mississippi Code of 1972, is
543 amended as follows:

544 91-8-411. (a) During the settlor's lifetime, a
545 noncharitable irrevocable trust may be modified or terminated by
546 the trustee upon consent of all qualified beneficiaries, even if
547 the modification or termination is inconsistent with a material
548 purpose of the trust if the settlor does not object to the
549 proposed modification or termination. The trustee shall notify
550 the settlor of the proposed modification or termination not less
551 than sixty (60) days before initiating the modification or
552 termination. The notice of modification or termination must
553 include:

554 (1) An explanation of the reasons for the proposed
555 modification or termination;

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

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

561 (b) Following the settlor's death, a noncharitable
562 irrevocable trust may be terminated upon consent of all of the
563 qualified beneficiaries if the court concludes that continuance of



564 the trust is not necessary to achieve any material purpose of the
565 trust. A noncharitable irrevocable trust may be modified upon
566 consent of all of the qualified beneficiaries if the court
567 concludes that modification is not inconsistent with a material
568 purpose of the trust.

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

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

576 (1) If all of the qualified beneficiaries had
577 consented, the trust could have been modified or terminated under
578 this section; and

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

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

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



587 (2) The value of all interests in the trust owned by
588 charitable organizations does not exceed five percent (5%) of the
589 value of the trust.

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

592 **SECTION 8.** Section 91-8-703, Mississippi Code of 1972, is
593 amended as follows:

594 91-8-703. (a) Cotrustees who are unable to reach a
595 unanimous decision after consultation among all the cotrustees may
596 act by majority decision.

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

599 (c) A cotrustee must participate in the performance of a
600 trustee's function and consult with the other cotrustees unless
601 the cotrustee is unavailable to perform the function because of
602 absence, illness, disqualification under other law, or other
603 temporary incapacity or the cotrustee has properly delegated the
604 performance of the function to another trustee.

605 (d) If a cotrustee is unavailable to perform duties because
606 of absence, illness, disqualification under other law, or other
607 temporary incapacity, and prompt action is necessary to achieve
608 the purposes of the trust or to avoid injury to the trust
609 property, the remaining cotrustee or a majority of the remaining
610 cotrustees may act for the trust.



611 (e) A trustee may delegate to a cotrustee the performance of
612 a function other than a function that the terms of the trust
613 instrument expressly require the trustees to perform jointly.
614 Unless a delegation was irrevocable, a trustee may revoke a
615 delegation previously made.

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

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

620 (1) Prevent a cotrustee from committing a serious
621 breach of trust; and

622 (2) Compel a cotrustee to redress a serious breach of
623 trust.

624 (h) A dissenting trustee who joins in an action at the
625 direction of the majority of the trustees and who notified any
626 cotrustee of the dissent at or before the time of the action is
627 not liable for the action unless the action is a serious breach of
628 trust.

629 (i) A trustee, trust advisor and trust protector shall keep
630 each cotrustee, trust advisor, trust protector and any other
631 fiduciary reasonably informed about the administration of the
632 trust, to the extent the trustee, trust advisor or trust protector
633 has knowledge that each such cotrustee, trust advisor, trust
634 protector or other fiduciary does not have knowledge of the
635 trustee's, trust advisor's or trust protector's actions, or



636 regarding other material information or the availability of such
637 information, related to the administration of the trust that would
638 be reasonably necessary for each cotrustee, trust advisor, trust
639 protector or other fiduciary to perform his or her duties as a
640 trustee, trust advisor, trust protector or other fiduciary of the
641 trust.

642 **SECTION 9.** Section 91-8-814, Mississippi Code of 1972, is
643 amended as follows:

644 91-8-814. (a) Relative to exercise of powers over
645 discretionary and other interests:

646 (1) "Improper motive" means to demonstrate action such
647 as the following:

648 (A) A trustee refusing to make or limiting
649 distributions to beneficiaries other than the trustee due to the
650 trustee's self-interest when the trustee also holds a beneficial
651 interest subject to a discretionary interest; or

652 (B) A trustee making a distribution in excess of
653 an ascertainable standard to himself or herself as beneficiary
654 when the trustee is restricted by an ascertainable standard in the
655 trust.

656 (2) Unless otherwise provided in the trust:

657 (A) If the settlor's spouse is named as a
658 beneficiary, the * * * settlor is still living and the trust is
659 classified as a support trust, then the trustee shall consider the



660 resources of the settlor's spouse, including the settlor's
661 obligation of support, before making a distribution; and

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

665 (b) The following provisions apply only to discretionary
666 interests:

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

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

672 (3) A reasonableness standard shall not be applied to
673 the exercise of discretion by the trustee with regard to a
674 discretionary interest;

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

678 (5) Absent express language in the trust instrument to
679 the contrary, if the distribution language in a discretionary
680 interest permits unequal distributions between beneficiaries or
681 distributions to the exclusion of other beneficiaries, the trustee
682 may distribute all of the accumulated, accrued, or undistributed
683 income and principal to one (1) beneficiary in the trustee's
684 discretion.



685 (c) The following provisions apply only to mandatory or
686 support interests:

687 (1) A beneficiary of a mandatory or a support interest
688 has an enforceable right to a distribution pursuant to a court's
689 review;

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

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

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

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

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

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



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

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

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

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

719 (3) A trust if contributions to the trust qualify for
720 the annual exclusion under Section 2503(c) of the Internal Revenue
721 Code.

722 **SECTION 10.** Section 91-8-1012, Mississippi Code of 1972, is
723 amended as follows:

724 91-8-1012. (a) A person other than a beneficiary who in
725 good faith assists a trustee, or who in good faith and for value
726 deals with a trustee, without actual knowledge that the trustee is
727 exceeding or improperly exercising the trustee's powers is
728 protected from liability as if the trustee properly exercised the
729 power.

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



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

736 (d) A person other than a beneficiary who in good faith
737 assists a former trustee, or who in good faith and for value deals
738 with a former trustee, without actual knowledge that the
739 trusteeship has terminated, is protected from liability as if the
740 former trustee were still a trustee.

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

744 **SECTION 11.** Section 91-8-1201, Mississippi Code of 1972, is
745 amended as follows:

746 91-8-1201. (a) A trust protector or trust advisor is any
747 person, and may be a committee of more than one (1) person, other
748 than a trustee, who under the terms of the trust has a power or
749 duty with respect to a trust, including, but not limited to, one
750 or more of the following powers:

751 (1) The power to modify or amend the trust instrument
752 to achieve favorable tax status or respond to changes in any
753 applicable federal, state, or other tax law affecting the trust,
754 including, but not limited to, any rulings, regulations, or other
755 guidance implementing or interpreting such laws;

756 (2) The power to amend or modify the trust instrument
757 to take advantage of changes in the rule against perpetuities,
758 laws governing restraints on alienation, or other state laws



759 restricting the terms of the trust, the distribution of trust
760 property, or the administration of the trust;

761 (3) The power to appoint a successor trust protector or
762 trust advisor;

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

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

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

769 (7) The power to remove a trustee, cotrustee, or
770 successor trustee, for the reasons stated in the trust instrument,
771 and appoint a successor;

772 (8) The power to consent to a trustee's or cotrustee's
773 action or inaction in making distributions to beneficiaries;

774 (9) The power to increase or decrease any interest of
775 the beneficiaries in the trust, to grant a power of appointment to
776 one or more trust beneficiaries, or to terminate or amend any
777 power of appointment granted in the trust;

778 (10) The power to perform a specific duty or function
779 that would normally be required of a trustee or cotrustee;

780 (11) The power to advise the trustee or cotrustee
781 concerning any beneficiary;

782 (12) The power to consent to a trustee's or cotrustee's
783 action or inaction relating to investments of trust assets;



784 (13) The power to direct the acquisition, disposition,
785 or retention of any trust investment;

786 (14) The power to terminate all or part of a trust;

787 (15) The power to veto or direct all or part of any
788 trust distribution;

789 (16) The power to borrow money with or without
790 security, and mortgage or pledge trust property for a period
791 within or extending beyond the duration of the trust;

792 (17) The power to make loans out of trust property,
793 including, but not limited to, loans to a beneficiary on terms and
794 conditions, including without interest, considered to be fair and
795 reasonable under the circumstances;

796 (18) The power to vote proxies and exercise all other
797 rights of ownership relative to securities and business entities
798 held by the trust;

799 (19) The power to select one or more investment
800 advisors, managers or counselors, including, but not limited to, a
801 trustee, and delegate to them any of its powers; * * *

802 (20) The power to direct the trustee with respect to
803 any additional powers and discretions over investment and
804 management of trust assets provided in the trust instrument * * *;

805 (21) The power to receive notices, information, and
806 reports otherwise required to be provided to a beneficiary under
807 Section 91-8-813(a) and (b);



808 (22) The power to represent and bind a beneficiary
809 under Section 91-8-303(8) to the extent there is not material
810 conflict of interest between the trust protector or trust advisor
811 and the beneficiary; and

812 (23) The power to designate someone to represent and
813 bind a beneficiary under Section 91-8-303(8) to the extent there
814 is no material conflict of interest between the person designated
815 and the beneficiary.

816 (b) The exercise of a power by a trust advisor or a trust
817 protector shall be exercised in the sole and absolute discretion
818 of the trust advisor or trust protector and shall be binding on
819 all other persons.

820 (c) Any power of a trust advisor or trust protector to
821 directly or indirectly modify a trust may be granted
822 notwithstanding the provisions of Sections 91-8-410 through
823 91-8-412 and 91-8-414.

824 (d) An excluded fiduciary may continue to follow the
825 direction of a trust protector or trust advisor upon the
826 incapacity or death of the grantor of a trust to the extent
827 provided in the trust instrument.

828 (e) Notwithstanding anything in this section to the
829 contrary, no modification, amendment, or grant of a power of
830 appointment with respect to a trust, all of whose beneficiaries
831 are charitable organizations, may authorize a trust protector or



832 trust advisor to grant a beneficial interest in the trust to any
833 noncharitable interest or purpose.

834 **SECTION 12.** Section 91-9-503, Mississippi Code of 1972, is
835 amended as follows:

836 91-9-503. Except as provided in Section 91-9-509, if the
837 trust instrument provides that a beneficiary's interest in income
838 or principal or both of a trust is not subject to voluntary or
839 involuntary transfer, the beneficiary's interest in income or
840 principal or both under the trust may not be transferred and is
841 not subject to the enforcement of a money judgment until paid to
842 the beneficiary.

843 **SECTION 13.** Section 91-9-505, Mississippi Code of 1972, is
844 amended as follows:

845 91-9-505. Except as provided in Section 91-9-509, if the
846 trust instrument provides that the trustee shall pay income or
847 principal or both of a trust for the education or support of a
848 beneficiary, the beneficiary's interest in income or principal or
849 both under the trust, to the extent the income or principal or
850 both is necessary for the education or support of the beneficiary,
851 may not be transferred and is not subject to the enforcement of a
852 money judgment until paid to the beneficiary. This section shall
853 not be applied or construed to limit or otherwise diminish a
854 restraint on transfer that is valid under Section 91-9-503.

855 **SECTION 14.** Section 91-9-507, Mississippi Code of 1972, is
856 amended as follows:



857 91-9-507. (1) Except as provided in Section 91-9-509, if
858 the trust instrument provides that the trustee shall pay to or for
859 the benefit of a beneficiary so much of the income or principal or
860 both of a trust as the trustee in the trustee's discretion sees
861 fit to pay, a transferee or creditor of the beneficiary may not
862 compel the trustee to pay any amount from the trust that may be
863 paid only in the exercise of the trustee's discretion. This
864 subsection shall not be applied or construed to limit or otherwise
865 diminish a restraint on transfer that is valid under Section
866 91-9-503.

867 (2) If the trustee has knowledge of a transfer of a
868 beneficiary's interest in a trust or has been served with process
869 in a proceeding for garnishment or attachment or the like by a
870 judgment creditor seeking to reach a beneficiary's interest in a
871 trust, and the trustee pays to or for the benefit of the
872 beneficiary any part of the income or principal of the trust that
873 may be paid only in the exercise of the trustee's discretion, the
874 trustee is liable to the transferee or creditor to the extent that
875 the payment to or for the benefit of the beneficiary impairs the
876 right of the transferee or creditor. This subsection does not
877 apply if the beneficiary's interest in the trust is subject to a
878 restraint on transfer that is valid under Section 91-9-503.

879 (3) This section applies regardless of whether the trust
880 instrument provides a standard for the exercise of the trustee's
881 discretion.



882 (4) Nothing in this section limits any right the beneficiary
883 may have to compel the trustee to pay to or for the benefit of the
884 beneficiary all or part of the income or principal of a trust.

885 **SECTION 15.** The following shall be codified as Section
886 91-9-509, Mississippi Code of 1972:

887 91-9-509. **Settlor as beneficiary of own trust; invalid**
888 **restraint on transfers; payments for education or support at**
889 **trustee's discretion; maximum amount accessible by transferees or**
890 **creditors.** (1) Except as provided in Sections 91-9-701 through
891 91-9-723, if the settlor is a beneficiary of a trust created by
892 the settlor and the settlor's interest in the trust is subject to
893 a provision restraining the voluntary or involuntary transfer of
894 the settlor's interest, the restraint is invalid against
895 transferees or creditors of the settlor. The invalidity of the
896 restraint on transfer does not affect the validity of the trust.

897 (2) Except as provided in Sections 91-9-701 through
898 91-9-723, if the settlor is a beneficiary of a trust created by
899 the settlor and the trust instrument provides that the trustee
900 shall pay income or principal, or both, of the trust for the
901 education or support of the beneficiary, or gives the trustee
902 discretion to determine the amount of income or principal, or
903 both, of the trust to be paid to or for the benefit of the
904 settlor, a transferee or creditor of the settlor may reach the
905 maximum amount of the trust that the trustee could pay to or for
906 the benefit of the settlor under the trust instrument, not



907 exceeding the amount of the settlor's proportionate contribution
908 to the trust.

909 **SECTION 16.** Section 91-9-703, Mississippi Code of 1972, is
910 amended as follows:

911 91-9-703. As used in this article, unless the context
912 otherwise requires:

913 (a) "Claim" means a right to payment, whether or not
914 the right is reduced to judgment, liquidated, unliquidated, fixed,
915 contingent, matured, unmatured, disputed, undisputed, legal,
916 equitable, secured, or unsecured.

917 (b) "Creditor" means, with respect to a transferor, a
918 person who has a claim.

919 (c) "Debt" means liability on a claim.

920 (d) "Disposition" means a transfer, conveyance or
921 assignment of property, including a change in the legal ownership
922 of property occurring upon the substitution of one (1) trustee for
923 another or the addition of one or more new trustees.

924 "Disposition" also includes the exercise of a power so as to cause
925 a transfer of property to a trustee or trustees, but shall not
926 include the release or relinquishment of an interest in property
927 that, until the release or relinquishment, was the subject of a
928 qualified disposition.

929 (e) "Investment advisor" means a person given authority
930 by the terms of a qualified disposition trust to direct, consent



931 to or disapprove a * * * trustee's actual or proposed
932 investment * * * decision.

933 (f) "Investment decision" means the retention, purchase,
934 sale, exchange, tender, or other transaction affecting the
935 ownership of or rights in investments.

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

938 (h) "Property" includes real property, personal property,
939 and interests in real or personal property.

940 (i) "Qualified affidavit" means a sworn affidavit signed by
941 the transferor before making a qualified disposition. In the
942 event of a disposition by a transferor who is a trustee, the
943 affidavit shall be signed by the transferor who made the original
944 disposition to the trustee, or a predecessor trustee, in a form
945 that meets the requirements of * * * subsection (n)(2) and (3) of
946 this section and shall state facts as of the time of the original
947 disposition.

948 (j) "Qualified disposition" means a disposition by or from a
949 transferor to a qualified trustee or qualified trustees, with or
950 without consideration, by means of a qualified disposition trust,
951 after the transferor executes a qualified affidavit.

952 (k) "Qualified trustee" means a person who:

953 (1) In the case of a natural person, is a resident of
954 this state, or, in all other cases, is authorized by the law of
955 this state to act as a trustee and whose activities are subject to



956 supervision by the Mississippi Department of Banking and Consumer
957 Finance, the Federal Deposit Insurance Corporation, the
958 Comptroller of the Currency, or the Office of Thrift Supervision
959 or any successor to them;

960 (2) Maintains or arranges for custody in this state of
961 some or all of the property that is the subject of the qualified
962 disposition, maintains records for the trust on an exclusive or
963 nonexclusive basis, prepares or arranges for the preparation of
964 required income tax returns for the trust, or otherwise materially
965 participates in the administration of the trust; and

966 (3) Is not the transferor.

967 (1) "Spouse" or "former spouse" means only persons to whom
968 the transferor was legally married at, or before, the time the
969 qualified disposition is made.

970 (m) "Transferor" means a person who, directly or indirectly,
971 makes a disposition or causes a disposition to be made in such
972 person's capacity:

973 (1) As an owner of property;

974 (2) As a holder of a power of appointment that
975 authorizes the holder to appoint in favor of the holder, the
976 holder's creditors, the holder's estate or the creditors of the
977 holder's estate; or

978 (3) As a trustee.



979 (n) "Qualified disposition trust" means a trust instrument
980 appointing a qualified trustee or qualified trustees for the
981 property that is the subject of a disposition, which instrument:

982 (1) Expressly incorporates the law of this state to
983 govern the validity, construction and administration of the trust;

984 (2) Is irrevocable; and

985 (3) Provides that the interest of the transferor or
986 other beneficiary in the trust property or the income from the
987 trust property may not be transferred, assigned, pledged or
988 mortgaged, whether voluntarily or involuntarily, before the
989 qualified trustee or qualified trustees actually distribute the
990 property or income from the property to the beneficiary.

991 **SECTION 17.** Section 91-9-707, Mississippi Code of 1972, is
992 amended as follows:

993 91-9-707. (a) Notwithstanding any law to the contrary, no
994 action of any kind, including, but not limited to, an action to
995 enforce a judgment entered by a court or other body having
996 adjudicative authority, shall be brought at law or in equity for
997 an attachment or other provisional remedy against property that is
998 the subject of a qualified disposition or for the avoidance of a
999 qualified disposition, unless the action is brought pursuant to
1000 the provisions of the Uniform Fraudulent Transfer Act, Section
1001 15-3-101 et seq., and * * * unless the qualified disposition was
1002 also made with actual intent to defraud the creditor.



1003 (b) (1) Notwithstanding Section 15-3-115, a creditor's
1004 claim under subsection (a) shall be extinguished:

1005 (A) If the person is a creditor when the qualified
1006 disposition to a qualified disposition trust is made, unless the
1007 action is commenced within the later of two (2) years after the
1008 qualified disposition is made or six (6) months after the person
1009 discovers or reasonably should have discovered the qualified
1010 disposition; or

1011 (B) If the person becomes a creditor after the
1012 qualified disposition to a qualified disposition trust is made,
1013 unless the action is commenced within two (2) years after the
1014 qualified disposition is made;

1015 (2) If subsection (b)(1) applies:

1016 (A) A person shall be deemed to have discovered
1017 the existence of a qualified disposition to a qualified
1018 disposition trust at the time any public record is made of any
1019 transfer of property relative to the qualified disposition,
1020 including, but not limited to, the conveyance of real property
1021 that is recorded in the office of the chancery clerk of the county
1022 in which the property is located or the filing of a financing
1023 statement under Chapter 9, Title 75, * * * Mississippi Code of
1024 1972, or the equivalent recording or filing of either with the
1025 appropriate person or official under the laws of a jurisdiction
1026 other than this state; and



1027 (B) No creditor shall bring an action with respect
1028 to property that is the subject of a qualified disposition unless
1029 that creditor proves by clear and convincing evidence that the
1030 settlor's transfer of the property was made with the intent to
1031 defraud that specific creditor.

1032 (c) For purposes of this article, a qualified disposition
1033 that is made by means of a disposition by a transferor who is a
1034 trustee shall be deemed to have been made as of the time, whether
1035 before, on, or after July 1, 2014, the property that is the
1036 subject of the qualified disposition was originally transferred to
1037 the transferor acting in the capacity of trustee, or any
1038 predecessor trustee, in a form that meets the requirements of
1039 Section 91-9-703(n) (2) and (3).

1040 (d) Notwithstanding any law to the contrary, a creditor,
1041 including a creditor whose claim arose before or after a qualified
1042 disposition, or any other person shall have only the rights with
1043 respect to a qualified disposition as are provided in this section
1044 and Section 91-9-711, and neither a creditor nor any other person
1045 shall have any claim or cause of action against the trustee, an
1046 advisor of a trust that is the subject of a qualified disposition,
1047 or against any person involved in the counseling, drafting,
1048 preparation, execution, or funding of a trust that is the subject
1049 of a qualified disposition. For purposes of this section,
1050 counseling, drafting, preparation, execution or funding of a trust
1051 that is the subject of a qualified disposition includes the



1052 counseling, drafting, preparation, execution and funding of a
1053 limited partnership or a limited liability company if interests in
1054 the limited partnership or limited liability company are
1055 subsequently transferred to the trust that is the subject of a
1056 qualified disposition.

1057 (e) Notwithstanding any law to the contrary, no action of
1058 any kind, including, but not limited to, an action to enforce a
1059 judgment entered by a court or other body having adjudicative
1060 authority, shall be brought at law or in equity against a trustee
1061 or an advisor of a trust that is the subject of a qualified
1062 disposition, or against any person involved in the counseling,
1063 drafting, preparation, execution or funding of a trust that is the
1064 subject of a qualified disposition, if, as of the date the action
1065 is brought, an action by a creditor with respect to the qualified
1066 disposition would be barred under this section.

1067 (f) In circumstances where more than one (1) qualified
1068 disposition is made by means of the same qualified disposition
1069 trust, then:

1070 (1) The making of a subsequent qualified disposition
1071 shall be disregarded in determining whether a creditor's claim
1072 with respect to a prior qualified disposition is extinguished as
1073 provided in subsection (b); and

1074 (2) Any distribution to a beneficiary shall be deemed
1075 to have been made from the latest qualified disposition.



1076 (g) If, in any action brought against a trustee of a trust
1077 that is the result of a qualified disposition, a court takes any
1078 action whereby the court declines to apply the law of this state
1079 in determining the effect of a spendthrift provision of the trust,
1080 the trustee of the trust shall immediately upon the court's action
1081 and without the further order of any court, cease in all respects
1082 to be trustee of the trust and a successor trustee shall succeed
1083 as trustee in accordance with the terms of the trust or, if the
1084 trust does not provide for a successor trustee and the trust would
1085 otherwise be without a trustee, a court of this state, upon the
1086 application of any beneficiary of the trust, shall appoint a
1087 successor trustee upon the terms and conditions it determines to
1088 be consistent with the purposes of the trust and this article.
1089 Upon the trustee's ceasing to be trustee, the trustee shall have
1090 no power or authority other than to convey the trust property to
1091 the successor trustee named in the trust in accordance with this
1092 section.

1093 (h) A trust that is the subject of a qualified disposition
1094 shall be subject to this section whether or not the transferor
1095 retains any or all of the powers and rights described in Section
1096 91-9-709 or serves as an investment advisor pursuant to Section
1097 91-9-717.

1098 (i) (1) Notwithstanding any provision of subsection (a) or
1099 (b) to the contrary, the limitations on actions by creditors in
1100 law or equity shall not apply and the creditors' claims shall not



1101 be extinguished if the transferor is indebted on account of an
1102 agreement, judgment, or order of a court for the payment of one or
1103 more of the following:

1104 (A) To any person to whom the transferor is
1105 indebted on account of an agreement or order of court for the
1106 payment of support or alimony in favor of the transferor's spouse,
1107 former spouse or children, or for a division or distribution of
1108 property in favor of the transferor's spouse or former spouse, but
1109 only to the extent of such debt;

1110 (B) To any person who suffers death, personal
1111 injury, or property damage on or before the date of a qualified
1112 disposition by a transferor, if the death, personal injury, or
1113 property damage is at any time determined to have been caused, in
1114 whole or in part, by the tortious act or omission of either the
1115 transferor or by another person for whom the transferor is or was
1116 vicariously liable, but only to the extent of the claim against
1117 the transferor or other person for whom the transferor is or was
1118 vicariously liable;

1119 (C) To the State of Mississippi or any political
1120 subdivision thereof, including, but not limited to, court-ordered
1121 restitution in a criminal matter; or

1122 (D) To any creditor in an amount not to exceed One
1123 Million Five Hundred Thousand Dollars (\$1,500,000.00) if the
1124 transferor failed to maintain a One Million Dollar (\$1,000,000.00)
1125 umbrella policy as required by subsection (1).



1126 (2) (A) A claim provided under this subsection (i)
1127 shall be asserted against a trustee only:

1128 (i) Upon a final nonappealable determination
1129 of a Mississippi court or a fully domesticated, final
1130 nonappealable order of a court of another state that the debt is
1131 past due; and

1132 (ii) After the court has determined that the
1133 claimant has made reasonable attempts to collect the debt from any
1134 other sources of the transferor or that any attempt would be
1135 futile.

1136 (B) Nothing in this subsection (i) (2) shall be
1137 construed to prohibit the court from making the findings required
1138 in subsection (i) (2) (A) in the same proceeding and order.

1139 (j) Subsection (i) shall not apply to any claim for forced
1140 heirship, legitime or elective share.

1141 (k) In addition to provisions of subsection (j), to the
1142 extent subsection (j) applies to the laws of any foreign country:

1143 (1) Neither a qualified disposition trust nor any
1144 disposition made subject to the terms of the qualified disposition
1145 trust is subject to the laws of any foreign country, nor is any
1146 such qualified disposition trust or the disposition void,
1147 voidable, liable to be set aside, or defective in any manner for
1148 any reason including, but not limited to:



1149 (A) The law of any foreign country prohibits or
1150 does not recognize the concept of a qualified disposition trust;
1151 or

1152 (B) The qualified disposition trust or disposition
1153 avoids or defeats any right, claim, or interest conferred by the
1154 law of a foreign country upon any person by reason of a personal
1155 relationship to the settlor or by way of heirship rights or
1156 contravenes any rule or law of a foreign country or any foreign
1157 country's judicial or administrative order or action intended to
1158 recognize, protect, enforce, or give effect to the right, claim,
1159 or interest.

1160 (2) Relative to any foreign country or any interest in
1161 property arising or originating under the laws of any foreign
1162 country:

1163 (A) No form of forced heirship, legitime, forced
1164 share or any similar heirship rights or form of transmission or
1165 transfer of property from a decedent or from a living person, or
1166 any restrictions on transmission or transfer of property from a
1167 decedent or a living person is recognized by this state; or

1168 (B) No heirship rights described in subsection
1169 (k) (2) (A) conferred under the law of a foreign country shall
1170 constitute an obligation or liability, the transfer, conveyance or
1171 devise of which, would violate Chapter 3, Title 15, * * *
1172 Mississippi Code of 1972; and



1173 (C) Subsection (k)(1) shall apply to all realty or
1174 other forms of immovable property physically in this state, as
1175 well as to all personal or movable property wherever situated if
1176 owned by a qualified disposition trust containing a state
1177 jurisdiction provision designating that the law of this state
1178 controls the qualified disposition trust;

1179 (3) No judgment or other holding of any judicial body
1180 of any foreign country, including, but not limited to, any court,
1181 administrative body or other entity or organization purportedly
1182 having the power to make judicial or administrative decisions of
1183 any foreign country, shall be recognized or enforced or give rise
1184 to any equitable forms of relief, including, but not limited to,
1185 estoppel, to the extent the judgment or other holding concerns a
1186 qualified disposition trust containing a state jurisdiction
1187 provision designating that the law of this state controls the
1188 qualified disposition trust or to the extent the judgment or other
1189 holding concerns property held by the qualified disposition trust.

1190 (4) Subsection (a) applies in addition to all other
1191 provisions of this article.

1192 (1) The transferor shall obtain a general liability policy
1193 and, if applicable, a professional liability policy, and each
1194 policy must have a policy limit of at least One Million Dollars
1195 (\$1,000,000.00). Policy premiums must be paid by the transferor.

1196 **SECTION 18.** Section 91-8-1013, Mississippi Code of 1972, is
1197 amended as follows:



1198 91-8-1013. (a) Instead of furnishing a copy of the trust
1199 instrument to any person to evidence the existence and validity of
1200 the trust, the trustee may furnish to the person a certification
1201 of trust, signed by the trustee or trustees having signature
1202 authority as identified in paragraph (* * *6) of this subsection,
1203 attested by a notary public, and shall contain the following:

1204 (1) An affirmation of the current existence of the
1205 trust and the date on which the trust came into existence;

1206 (2) The identity of the settlor or settlors;

1207 (3) The identity and address of the currently acting
1208 trustee or trustees and may contain the identity and address of
1209 the named successor trustee or trustees or a statement that no
1210 successor is named;

1211 (4) The administrative or managerial powers of the
1212 trustee in a pending transaction or relevant to the request;

1213 (5) The revocability or irrevocability of the trust and
1214 the identity of any person holding a power to revoke the trust;

1215 (6) When there are multiple trustees or multiple
1216 successor trustees, the signature authority of the trustees
1217 indicating whether all or less than all of the currently acting
1218 trustees are required to sign in order to exercise various powers
1219 of the trustee;

1220 (7) Where there are successor trustees designated, a
1221 statement detailing the conditions for their succession or a



1222 statement that a third party may rely on the authority of one or
1223 more successors without proof of their succession;

1224 (8) The trust's Taxpayer Identification Number, whether
1225 a social security number or Employer Identification Number, but
1226 only if the trust's identification number is essential to the
1227 transaction for which the request for the trust document is made;

1228 (9) The name in which title to trust property may be
1229 taken; and

1230 (10) A statement that, to the best of the trustee's
1231 knowledge, the trust has not been revoked, modified, or amended in
1232 any manner that would cause the representations contained in the
1233 certification of trust to be incorrect.

1234 (b) The certification of trust shall not be required to
1235 contain the dispositive provisions of a trust that set forth the
1236 distribution of the trust estate.

1237 (c) The trustee offering the certification of trust may
1238 provide copies of all or any part of the trust document and
1239 amendments, if any. Nothing in this section is intended to
1240 require or imply an obligation to provide dispositive provisions
1241 of the trust or a copy of the entire trust documents and
1242 amendments.

1243 (d) A person who acts in reliance upon a certification of
1244 trust without knowledge that the representations contained therein
1245 are incorrect is not liable to any person for so acting. A person
1246 who does not have actual knowledge that the facts contained in the



1247 certification of trust are incorrect may assume without inquiry
1248 the existence of the facts contained in the certification. Actual
1249 knowledge shall not be inferred solely from the fact that a copy
1250 of all or part of the trust instrument is held by the person
1251 relying on the trust certification. Nothing contained in this
1252 section shall limit the rights of the beneficiaries of the trust
1253 against the trustee. Any person relying on the certification of
1254 trust shall be indemnified from the assets of the trust to the
1255 extent of the share of the trust attributable to the beneficiary
1256 or beneficiaries bringing any action against the person for any
1257 costs, damage, attorney fees, or other expenses incurred in
1258 defending any action against the person arising for the
1259 transaction to which a certification of trust related.

1260 (e) A person's failure to request a certification of trust
1261 does not affect the protections provided that person in this
1262 section. No inference that the person has not acted in good faith
1263 or that the person was negligent may be drawn from the failure of
1264 the person to request a certification of trust. Nothing in this
1265 section is intended to create an implication that a person is
1266 liable for acting in reliance on a certification of trust under
1267 circumstances where the requirements of this section are not
1268 satisfied.

1269 (f) Nothing in this section shall be construed to require a
1270 third party, when presented with a trust certificate, to enter
1271 into a contract with a trustee relating to trust assets or



1272 obligations, or to preclude a third party from demanding as a
1273 precondition to any contract that the trustee provide additional
1274 information in order to clarify any ambiguities or inconsistencies
1275 in the trust certificate.

1276 (g) This section does not limit the right of a person to
1277 obtain a copy of the trust instrument in a judicial proceeding
1278 concerning the trust.

1279 **SECTION 19.** This act shall take effect and be in force from
1280 and after July 1, 2014.

