

By: Representative Roberson

To: Judiciary A

HOUSE BILL NO. 1425

1 AN ACT TO REVISE MISSISSIPPI LAW GOVERNING ESTATES AND
2 TRUSTS; TO CREATE A NEW SECTION TO CREATE THE MISSISSIPPI REAL
3 PROPERTY TRANSFER ON DEATH ACT; TO ENACT DEFINITIONS; TO PROVIDE
4 FOR APPLICABILITY, AND NONEXCLUSIVITY; TO AUTHORIZE A TRANSFER ON
5 DEATH DEED THAT IS BOTH REVOCABLE AND NONTESTAMENTARY; TO REQUIRE
6 CAPACITY ON THE PART OF THE TRANSFEROR AND SET OTHER REQUIREMENTS;
7 TO WAIVE NOTICE, DELIVERY, ACCEPTANCE AND CONSIDERATION; TO SET
8 LIMITS ON REVOCATION; TO PROVIDE FOR THE EFFECT OF A TRANSFER ON
9 DEATH DURING A TRANSFEROR'S LIFE; TO PROVIDE FOR THE EFFECT OF
10 SUBSEQUENT CONVEYANCE; TO PROVIDE FOR THE EFFECT AT TRANSFEROR'S
11 DEATH AND THE EFFECT OF LIENS, ENCUMBRANCES AND CREDITORS' CLAIMS;
12 TO AUTHORIZE DISCLAIMER; TO PROVIDE OPTIONAL FORMS; TO PROVIDE FOR
13 REVOCATION OF CERTAIN INSTRUMENTS EXECUTED BEFORE DIVORCE; TO
14 ENACT DEFINITIONS; TO PROVIDE FOR THE LIABILITY OF THE FORMER
15 SPOUSE AND CERTAIN OTHERS; TO MAKE PROVISION FOR CERTAIN
16 MULTIPLE-PARTY ACCOUNTS; TO CREATE STANDARDS FOR DETERMINING
17 AFFINITY AND CONSANGUINITY; TO CREATE THE MISSISSIPPI UNIFORM
18 ESTATE TAX APPORTIONMENT ACT; TO CREATE NEW SECTION 27-10-51,
19 MISSISSIPPI CODE OF 1972, TO ENACT A SHORT TITLE; TO CREATE NEW
20 SECTION 27-10-53, MISSISSIPPI CODE OF 1972, TO CREATE DEFINITIONS;
21 TO CREATE NEW SECTION 27-10-55, MISSISSIPPI CODE OF 1972, TO
22 PROVIDE FOR APPORTIONMENT BY WILL; TO CREATE NEW SECTION 27-10-57,
23 MISSISSIPPI CODE OF 1972, TO CREATE A STATUTORY SCHEME FOR
24 APPORTIONMENT OF ESTATE TAXES; TO CREATE NEW SECTION 27-10-59,
25 MISSISSIPPI CODE OF 1972, TO PROVIDE FOR CREDITS AND DEFERRALS; TO
26 CREATE NEW SECTION 27-10-61, MISSISSIPPI CODE OF 1972, TO PROVIDE
27 FOR INSTANCES WHEN PROPERTY IS IMPRACTICABLE OR UNAVAILABLE FOR
28 PAYMENT OF TAX; TO CREATE NEW SECTION 27-10-63, MISSISSIPPI CODE
29 OF 1972, TO MAKE RECAPTURE PROVISIONS; TO CREATE NEW SECTION
30 27-10-65, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR PAYMENT BY A
31 FIDUCIARY; TO CREATE NEW SECTION 27-10-67, MISSISSIPPI CODE OF
32 1972, TO PROVIDE FOR COLLECTION BY A FIDUCIARY; TO CREATE NEW
33 SECTION 27-10-69, MISSISSIPPI CODE OF 1972, TO CREATE A RIGHT OF
34 REIMBURSEMENT; TO CREATE NEW SECTION 27-10-71, MISSISSIPPI CODE OF



35 1972, TO PUT JURISDICTION IN THE CHANCERY COURT; TO CREATE NEW
36 SECTION 27-10-73, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR
37 UNIFORMITY; TO CREATE NEW SECTION 27-10-75, MISSISSIPPI CODE OF
38 1972, TO PROVIDE FOR SEVERABILITY; TO CREATE NEW SECTION 27-10-77,
39 MISSISSIPPI CODE OF 1972, TO MAKE TRANSITION PROVISIONS; TO CREATE
40 NEW SECTION 91-9-521, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR THE
41 RIGHTS OF A BENEFICIARY'S CREDITOR OR ASSIGNEE; TO CREATE NEW
42 SECTION 91-9-523, MISSISSIPPI CODE OF 1972, TO CREATE A
43 SPENDTHRIFT PROVISION; TO PROVIDE FOR FOREIGN PERSONAL
44 REPRESENTATIVES AND ANCILLARY ADMINISTRATION; TO ENACT
45 DEFINITIONS; TO PROVIDE FOR DELIVERY, PAYMENT, AND EFFECT OF BOTH;
46 TO PROVIDE FOR POWERS OF A FOREIGN PERSONAL REPRESENTATIVE; TO
47 PROVIDE FOR A NONRESIDENT DECEDENT; TO PROVIDE FOR JURISDICTION
48 OVER A FOREIGN PERSONAL REPRESENTATIVE AND SERVICE OF PROCESS; TO
49 CREATE NEW SECTIONS 91-9-525, 91-9-527, 91-9-529, 91-9-531,
50 91-9-533 AND 91-9-535, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR
51 CREDITOR RIGHTS WITH RESPECT TO BENEFICIAL INTERESTS IN TRUSTS; TO
52 CREATE NEW SECTIONS 91-8-501, 91-8-502, 91-8-503, 91-8-504,
53 91-8-505, 91-8-506 AND 91-8-507, MISSISSIPPI CODE OF 1972, TO
54 CREATE ARTICLE 5 OF THE UNIFORM TRUST CODE TO PROVIDE FOR
55 SPENDTHRIFT TRUSTS; TO AMEND SECTION 91-8-105, MISSISSIPPI CODE OF
56 1972, TO CONFORM; TO REPEAL SECTIONS 27-10-1 THROUGH 27-10-25,
57 MISSISSIPPI CODE OF 1972, WHICH CONSTITUTE THE UNIFORM ESTATE TAX
58 APPORTIONMENT ACT; TO REPEAL SECTIONS 89-21-1 THROUGH 89-21-17,
59 MISSISSIPPI CODE OF 1972, WHICH CONSTITUTE THE UNIFORM DISCLAIMER
60 OF PROPERTY INTERESTS ACT; TO REPEAL SECTIONS 91-9-501 THROUGH
61 91-9-511, MISSISSIPPI CODE OF 1972, WHICH CONSTITUTE THE FAMILY
62 TRUST PRESERVATION ACT OF 1998; TO REPEAL SECTION 91-7-259,
63 MISSISSIPPI CODE OF 1972, WHICH PROVIDES FOR FOREIGN FIDUCIARIES
64 AND LAWSUITS AND DEBTS; AND FOR RELATED PURPOSES.

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

66 **SECTION 1.** This section 1 is the Mississippi Uniform Real
67 Property Transfer on Death Act, which shall be codified as a
68 separate chapter in the Mississippi Code of 1972.

69 **Section 1. Short title.** Section 1 of this act may be cited
70 as the Mississippi Real Property Transfer on Death Act.

71 **Section 2. Definitions.** (1) "Beneficiary" means a person
72 who receives real property under a transfer on death deed.

73 (2) "Designated beneficiary" means a person designated
74 to receive real property in a transfer on death deed.



75 (3) "Joint owner with right of survivorship" or "joint
76 owner" means an individual who owns real property concurrently
77 with one or more other individuals with a right of survivorship.
78 The term includes a joint tenant and tenant by the entirety. The
79 term does not include a tenant in common.

80 (4) "Person" means an individual, corporation, business
81 trust, estate, trust, partnership, limited liability company,
82 association, joint venture, public corporation, government or
83 governmental subdivision, agency, or instrumentality, or any other
84 legal or commercial entity.

85 (5) "Real property" means an interest in real property
86 located in this state.

87 (6) "Transfer on death deed" means a deed authorized
88 under this chapter and does not refer to any other deed that
89 transfers an interest in real property on the death of an
90 individual.

91 (7) "Transferor" means an individual who makes a
92 transfer on death deed.

93 (8) In this chapter, the terms "cancel" and "revoke"
94 are synonymous.

95 **Section 3. Applicability.** This chapter applies to a
96 transfer on death deed executed and acknowledged on or after July
97 1, 2019, by a transferor who dies on or after July 1, 2019.



98 **Section 4. Nonexclusivity.** This chapter does not affect any
99 method of transferring real property otherwise permitted under the
100 laws of this state.

101 **Section 5. Transfer on death deed authorized.** An individual
102 may transfer the individual's interest in real property to one or
103 more beneficiaries effective at the transferor's death by a
104 transfer on death deed.

105 **Section 6. Transfer on death deed revocable.** A transfer on
106 death deed shall be executed as set forth in Section 89-3-1 and
107 need not be executed with the formalities of a will.

108 **Section 7. Transfer on death deed nontestamentary.** A
109 transfer on death deed is a nontestamentary instrument.

110 **Section 8. Capacity of transferor.** (a) The capacity
111 required to make or revoke a transfer on death deed is the same as
112 the capacity required to make a contract.

113 (b) A transfer on death deed may not be created through use
114 of a power of attorney unless the transfer of real property
115 through a transfer on death deed is specifically authorized in the
116 power of attorney.

117 **Section 9. Requirements.** To be effective, a transfer on
118 death deed must:

119 (1) Except as otherwise provided in subsection (2),
120 contain the essential elements and formalities of a recordable
121 deed;



122 (2) State that the transfer of an interest in real
123 property to the designated beneficiary is to occur at the
124 transferor's death;

125 (3) Be recorded before the transferor's death in the
126 deed records in the official records of the chancery clerk of the
127 county where the real property is located.

128 **Section 10. Notice, delivery, acceptance, consideration not**
129 **required.** A transfer on death deed is effective without:

130 (1) Notice or delivery to or acceptance by the
131 designated beneficiary during the transferor's life; or

132 (2) Consideration.

133 **Section 11. Revocation by instrument authorized; revocation**
134 **by act not permitted.** (a) Subject to subsections (d) and (e), an
135 instrument is effective to revoke a recorded transfer on death
136 deed, or any part of it, if the instrument:

137 (1) Is one (1) of the following:

138 (A) A subsequent transfer on death deed that
139 revokes the preceding transfer on death deed or part of the deed
140 expressly or by inconsistency; or

141 (B) Except as provided by subsection (b), an
142 instrument of revocation that expressly revokes the transfer on
143 death deed or part of the deed;

144 (2) Is acknowledged by the transferor after the
145 acknowledgment of the deed being revoked; and



146 (3) Is recorded before the transferor's death in the
147 official records of the chancery clerk of the county where the
148 deed being revoked is recorded.

149 (b) A will may not revoke or supersede a transfer on death
150 deed.

151 (c) If a marriage between the transferor and a designated
152 beneficiary is dissolved after a transfer on death deed is
153 recorded, a final judgment of the court dissolving the marriage
154 operates to revoke the transfer on death deed as to that
155 designated beneficiary.

156 (d) If a transfer on death deed is made by more than one (1)
157 transferor, revocation by a transferor does not affect the deed as
158 to the interest of another transferor who does not make that
159 revocation.

160 (e) A transfer on death deed made by joint owners with right
161 of survivorship is revoked only if it is revoked by all of the
162 living joint owners.

163 (f) This section does not limit the effect of an inter vivos
164 transfer of the real property.

165 **Section 12. Effect of transfer on death deed during**
166 **transferor's life.** During a transferor's life, a transfer on
167 death deed does not:

168 (1) Affect an interest or right of the transferor or
169 any other owner, including:



170 (A) The right to transfer or encumber the real
171 property that is the subject of the deed;

172 (B) Homestead rights in the real property, if
173 applicable; and

174 (C) Ad valorem tax exemptions, including
175 exemptions for residence homestead, persons sixty-five (65) years
176 of age or older, persons with disabilities, and veterans.

177 (2) Affect an interest or right of a transferee of the
178 real property that is the subject of the deed, even if the
179 transferee has actual or constructive notice of the deed;

180 (3) Affect an interest or right of a secured or
181 unsecured creditor or future creditor of the transferor, even if
182 the creditor has actual or constructive notice of the deed;

183 (4) Affect the transferor's or designated beneficiary's
184 eligibility for any form of public assistance, subject to
185 applicable federal law;

186 (5) Constitute a transfer triggering a "due on sale" or
187 similar clause;

188 (6) Invoke statutory real estate notice or disclosure
189 requirements;

190 (7) Create a legal or equitable interest in favor of
191 the designated beneficiary; or

192 (8) Subject the real property to claims or process of a
193 creditor of the designated beneficiary.



194 **Section 13. Effect of subsequent conveyance on transfer on**
195 **death deed.** An otherwise valid transfer on death deed is void as
196 to any interest in real property that is conveyed by the
197 transferor during the transferor's lifetime after the transfer on
198 death deed is executed and recorded if:

199 (1) A valid instrument conveying the interest is
200 recorded in the official records of the chancery clerk of the same
201 county in which the transfer on death deed is recorded; and

202 (2) The recording of the instrument occurs before the
203 transferor's death.

204 **Section 14. Effect of transfer on death deed at transferor's**
205 **death.** Except as otherwise provided in the transfer on death
206 deed, this section, or any other statute or the common law of this
207 state governing a decedent's estate, on the death of the
208 transferor, the following rules apply to an interest in real
209 property that is the subject of a transfer on death deed and owned
210 by the transferor at death:

211 (1) If a transferor is a joint owner with right of
212 survivorship who is survived by one or more other joint owners,
213 the real property that is the subject of the transfer on death
214 deed belongs to the surviving joint owner or owners. If a
215 transferor is a joint owner with right of survivorship who is the
216 last-surviving joint owner, the transfer on death deed is
217 effective.



218 (2) The last-surviving joint owner may revoke the
219 transfer on death deed subject to Section 10 of this Section 1.

220 (3) A transfer on death deed transfers real property
221 without covenant of warranty of title even if the deed contains a
222 contrary provision.

223 **Section 15. Transfer on death deed property subject to liens**
224 **and encumbrances at transferor's death; creditors' claims. (a)**

225 Except as otherwise provided in the transfer on death deed, in
226 this section, in Section 2 of this act relating to revocation by
227 divorce, in Section 91-1-25 relating to the prohibition on
228 inheriting from a person one has killed, in Title 91, Chapter 3,
229 Mississippi Code of 1972, being the Mississippi Uniform
230 Simultaneous Death Act, and in Section 91-5-25 relating to the
231 spousal right to renounce a will, on the death of the transferor,
232 the following rules apply to property that is the subject of a
233 transfer on death deed and owned by the transferor at death:

234 (1) Subject to paragraph (2), the interest in the
235 property is transferred to a designated beneficiary in accordance
236 with the deed.

237 (2) The interest of a designated beneficiary is
238 contingent on the designated beneficiary surviving the transferor.
239 The interest of a designated beneficiary that fails to survive the
240 transferor lapses.



241 (3) Subject to paragraph (4), concurrent interests are
242 transferred to the beneficiaries in equal and undivided shares
243 with no right of survivorship.

244 (4) If the transferor has identified two (2) or more
245 designated beneficiaries to receive concurrent interests in the
246 property, the share of one which lapses or fails for any reason is
247 transferred to the other, or to the others in proportion to the
248 interest of each in the remaining part of the property held
249 concurrently.

250 (b) Subject to Title 89, Chapter 5, Mississippi Code of
251 1972, relating to recordation of instruments, a designated
252 beneficiary takes the real property subject to all conveyances,
253 encumbrances, assignments, contracts, mortgages, liens, and other
254 interests to which the real property is subject at the
255 transferor's death. For purposes of this subsection and Section
256 89-5-1 et seq., the recording of the transfer on death deed is
257 considered to have occurred at the transferor's death.

258 **Section 16. Disclaimer.** A designated beneficiary may
259 disclaim all or part of the designated beneficiary's interest as
260 provided by the Mississippi Uniform Disclaimer of Property
261 Interests Act (2002/2010).

262 **Section 17. Optional form for transfer on death deed.** The
263 following form may be used to create a transfer on death deed.
264 The other sections of this chapter govern the effect of this or
265 any other instrument used to create a transfer on death deed:



266

REVOCABLE TRANSFER ON DEATH DEED

267

NOTICE TO OWNER

268

You should carefully read all information on the other side of this form. YOU MAY WANT TO CONSULT A LAWYER BEFORE USING THIS FORM.

269

270

271

This form must be recorded before your death, or it will not be effective.

272

273

IDENTIFYING INFORMATION

274

Owner or Owners Making This Deed:

275

276

Printed name

Mailing address

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278

Printed name

Mailing address

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Legal description of the property:

280

281

PRIMARY BENEFICIARY

282

I designate the following beneficiary if the beneficiary survives me.

283

284

285

Printed name

Mailing address, if available

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ALTERNATE BENEFICIARY - Optional

287

If my primary beneficiary does not survive me, I designate the following alternate beneficiary if that beneficiary survives me.

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Printed name

Mailing address, if available



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TRANSFER ON DEATH

At my death, I transfer my interest in the described property to the beneficiaries as designated above.

Before my death, I have the right to revoke this deed as set forth in Section 11 of this Section 1, the Mississippi Real Property Transfer on Death Act.

SIGNATURE OF OWNER OR OWNERS MAKING THIS DEED

_____ [(SEAL)] _____
Signature Date

_____ [(SEAL)] _____
Signature Date

ACKNOWLEDGMENT

(insert acknowledgment for deed here)

Section 18. Optional form of revocation. The following form may be used to create an instrument of revocation of a transfer on death deed. The other chapters of this section govern the effect of this or any other instrument used to revoke a transfer on death deed.

REVOCATION OF TRANSFER ON DEATH DEED

NOTICE TO OWNER

This revocation must be recorded before you die or it will not be effective. This revocation is effective only as to the interests in the property of owners who sign this revocation.

IDENTIFYING INFORMATION

Owner or Owners of Property Making This Revocation:



316 _____

317 Printed name Mailing address

318 _____

319 Printed name Mailing address

320 Legal description of the property:

321 _____

322 REVOCATION

323 I revoke all my previous transfers of this property by
324 transfer on death deed.

325 SIGNATURE OF OWNER OR OWNERS MAKING THIS REVOCATION

326 _____ [(SEAL)] _____

327 Signature Date

328 _____ [(SEAL)] _____

329 Signature Date

330 ACKNOWLEDGMENT

331 (insert acknowledgment here)

332 **Section 19. Relation to electronic signatures in Global and**

333 **National Commerce Act.** This chapter modifies, limits, and

334 supersedes the federal Electronic Signatures in Global and

335 National Commerce Act, 15 U.S.C. Section 7001, et seq., but does

336 not modify, limit, or supersede Section 101(c) of that act, 15

337 U.S.C. Section 7001(c), or authorize electronic delivery of any of

338 the notices described in Section 103(b) of that act, 15 U.S.C.



339 **SECTION 2.** This Section 2 provides for automatic revocation
340 of certain instruments executed before divorce, and shall be
341 codified as a separate chapter in the Mississippi Code of 1972.

342 **Section 1. Will provisions made before dissolution of**
343 **marriage.** (a) In this section:

344 (1) "Irrevocable trust" means a trust:

345 (A) For which the trust instrument was executed
346 before the dissolution of a testator's marriage; and

347 (B) That the testator was not solely empowered by
348 law or by the trust instrument to revoke.

349 (2) "Relative" means an individual related to another
350 individual by:

351 (A) Consanguinity, as determined under Section 10
352 of this chapter; or

353 (B) Affinity, as determined under Section 11 of
354 this chapter.

355 (b) If, after the testator makes a will, the testator's
356 marriage is dissolved by divorce, annulment, or a declaration that
357 the marriage is void, unless the will expressly provides
358 otherwise:

359 (1) All provisions in the will, including all fiduciary
360 appointments, shall be read as if the former spouse and each
361 relative of the former spouse who is not a relative of the
362 testator had failed to survive the testator; and



363 (2) All provisions in the will disposing of property to
364 an irrevocable trust in which a former spouse or a relative of a
365 former spouse who is not a relative of the testator is a
366 beneficiary or is nominated to serve as trustee or in another
367 fiduciary capacity or that confers a general or special power of
368 appointment on a former spouse or a relative of a former spouse
369 who is not a relative of the testator shall be read to instead
370 dispose of the property to a trust the provisions of which are
371 identical to the irrevocable trust, except any provision in the
372 irrevocable trust:

373 (A) Conferring a beneficial interest or a general
374 or special power of appointment to the former spouse or a relative
375 of the former spouse who is not a relative of the testator shall
376 be treated as if the former spouse and each relative of the former
377 spouse who is not a relative of the testator had disclaimed the
378 interest granted in the provision; and

379 (B) Nominating the former spouse or a relative of
380 the former spouse who is not a relative of the testator to serve
381 as trustee or in another fiduciary capacity, or trust protector,
382 trust advisor, investment advisor or similar capacity, shall be
383 treated as if the former spouse and each relative of the former
384 spouse who is not a relative of the testator had died immediately
385 before the dissolution of the marriage.

386 (c) Subsection (b) (2) does not apply if one (1) of the
387 following provides otherwise:



- 388 (1) A court order; or
389 (2) An express provision of a contract relating to the
390 division of the marital estate entered into between the testator
391 and the testator's former spouse before, during, or after the
392 marriage.

393 **Section 2. Treatment of decedent's former spouse.** A person
394 is not a surviving spouse of a decedent if the person's marriage
395 to the decedent has been dissolved by divorce, annulment, or a
396 declaration that the marriage is void, unless:

- 397 (1) As the result of a subsequent marriage, the person
398 is married to the decedent at the time of death; and
399 (2) The subsequent marriage is not declared void.

400 **Section 3. Definitions** In this chapter:

401 (1) "Disposition or appointment of property" includes a
402 transfer of property to or a provision of another benefit to a
403 beneficiary under a trust instrument.

404 (2) "Divorced individual" means an individual whose
405 marriage has been dissolved by divorce, annulment, or a
406 declaration that the marriage is void.

407 (3) "Relative" means an individual who is related to
408 another individual by consanguinity or affinity, as determined
409 under Sections 10 and 11 of this chapter.

410 (4) "Revocable," with respect to a disposition,
411 appointment, provision, or nomination, means a disposition to,
412 appointment of, provision in favor of, or nomination of an



413 individual's spouse that is contained in a trust instrument
414 executed by the individual before the dissolution of the
415 individual's marriage to the spouse and that the individual was
416 solely empowered by law or by the trust instrument to revoke
417 regardless of whether the individual had the capacity to exercise
418 the power at that time.

419 **Section 4. Revocation of certain nontestamentary transfers;**
420 **treatment of former spouse as beneficiary under certain policies**
421 **or plans.** (a) The dissolution of the marriage revokes a

422 provision in a trust instrument that was executed by a divorced
423 individual as settlor before the divorced individual's marriage
424 was dissolved and that:

425 (1) Is a revocable disposition or appointment of
426 property made to the divorced individual's former spouse or any
427 relative of the former spouse who is not a relative of the
428 divorced individual;

429 (2) Revocably confers a general or special power of
430 appointment on the divorced individual's former spouse or any
431 relative of the former spouse who is not a relative of the
432 divorced individual; or

433 (3) Revocably nominates the divorced individual's
434 former spouse or any relative of the former spouse who is not a
435 relative of the divorced individual to serve:

436 (A) As a personal representative, trustee,
437 conservator, agent, or guardian; or



438 (B) In another fiduciary or representative
439 capacity.

440 (b) Subsection (a) does not apply if one (1) of the
441 following provides otherwise:

442 (1) A court order;

443 (2) The express terms of a trust instrument executed by
444 the divorced individual before the individual's marriage was
445 dissolved; or

446 (3) An express provision of a contract relating to the
447 division of the marital estate entered into between the divorced
448 individual and the individual's former spouse before, during, or
449 after the marriage.

450 (c) Sections 12 and 13 of this chapter govern the
451 designation of a former spouse as a beneficiary of certain life
452 insurance policies or as a beneficiary under certain retirement
453 benefit plans or other financial plans.

454 **Section 5. Effect of revocation.** (a) An interest granted
455 in a provision of a trust instrument that is revoked under Section
456 4(a)(1) or (2) of this chapter passes as if the former spouse of
457 the divorced individual who executed the trust instrument and each
458 relative of the former spouse who is not a relative of the
459 divorced individual disclaimed the interest granted in the
460 provision.

461 (b) An interest granted in a provision of a trust instrument
462 that is revoked under Section 4(a)(3) of this chapter passes as if



463 the former spouse and each relative of the former spouse who is
464 not a relative of the divorced individual died immediately before
465 the dissolution of the marriage.

466 **Section 6. Liability of certain purchasers or recipients of**
467 **certain payments, benefits, or property.** A bona fide purchaser of
468 property from a divorced individual's former spouse or any
469 relative of the former spouse who is not a relative of the
470 divorced individual or a person who receives from the former
471 spouse or any relative of the former spouse who is not a relative
472 of the divorced individual a payment, benefit, or property in
473 partial or full satisfaction of an enforceable obligation:

474 (1) Is not required by this chapter to return the
475 payment, benefit, or property; and

476 (2) Is not liable under this chapter for the amount of
477 the payment or the value of the property or benefit.

478 **Section 7. Liability of former spouse for certain payments,**
479 **benefits, or property.** A divorced individual's former spouse or
480 any relative of the former spouse who is not a relative of the
481 divorced individual who, not for value, receives a payment,
482 benefit, or property to which the former spouse or the relative of
483 the former spouse who is not a relative of the divorced individual
484 is not entitled as a result of Sections 4(a) and (b) of this
485 Section 2:



486 (1) Shall return the payment, benefit, or property to
487 the person who is entitled to the payment, benefit, or property
488 under this chapter; or

489 (2) Is personally liable to the person described by
490 paragraph (1) for the amount of the payment or the value of the
491 benefit or property received, as applicable.

492 **Section 8. Certain Trusts with Divorced Individuals as Joint**
493 **Settlors.** (a) This section applies only to a trust created under
494 a trust instrument that:

495 (1) Was executed by two (2) married individuals as
496 settlors whose marriage to each other is subsequently dissolved;
497 and

498 (2) Includes a provision described by Section 4(a) of
499 this chapter.

500 (b) On the death of one of the divorced individuals who is a
501 settlor of a trust to which this section applies, the trustee
502 shall divide the trust into two trusts, each of which shall be
503 composed of the property attributable to the contributions of only
504 one (1) of the divorced individuals.

505 (c) An action authorized in a trust instrument described by
506 subsection (a) that requires the actions of both divorced
507 individuals may be taken with respect to a trust established in
508 accordance with subsection (b) from the surviving divorced
509 individual's contributions solely by that divorced individual.



510 (d) The provisions of this chapter apply independently to
511 each trust established in accordance with subsection (b) as if the
512 divorced individual from whose contributions the trust was
513 established had been the only settlor to execute the trust
514 instrument described by subsection (a).

515 (e) This section does not apply if one (1) of the following
516 provides otherwise:

517 (1) A court order;

518 (2) The express terms of a trust instrument executed by
519 the two (2) divorced individuals before their marriage was
520 dissolved; or

521 (3) An express provision of a contract relating to the
522 division of the marital estate entered into between the two (2)
523 divorced individuals before, during, or after their marriage.

524 **Section 9. Designation of Former Spouse or Relative of**
525 **Former Spouse on Certain Multiple-Party Accounts.** (a) In this
526 section:

527 (1) "Beneficiary," "multiple-party account," "party,"
528 "P.O.D. account," "P.O.D. payee," "T.O.D. account," and "T.O.D.
529 payee" have the meanings assigned in Title 91, Chapter 21,
530 Mississippi Code of 1972.

531 (2) "Public retirement system" has the meaning assigned
532 by Section 25-11-101.

533 (3) "Relative" has the meaning assigned by Section 3.



534 (b) If a decedent established a P.O.D. account, T.O.D.
535 account, or other multiple-party account and the decedent's
536 marriage was later dissolved by divorce, annulment, or a
537 declaration that the marriage is void, any payable on request
538 after death designation provision with respect to that account in
539 favor of the decedent's former spouse or a relative of the former
540 spouse who is not a relative of the decedent is not effective as
541 to that spouse or relative unless:

542 (1) The court decree dissolving the marriage designates
543 the former spouse or the former spouse's relative as the P.O.D.
544 payee, T.O.D. payee, or beneficiary; or

545 (2) After the marriage was dissolved, the decedent
546 redesignated the former spouse or the former spouse's relative as
547 the P.O.D payee, T.O.D. payee, or beneficiary; or

548 (3) The former spouse or the former spouse's relative
549 is designated to receive the proceeds or benefits in trust for, on
550 behalf of, or for the benefit of a child or dependent of either
551 the decedent or the former spouse.

552 (c) If a designation is not effective under subsection (b),
553 a multiple-party account is payable to the named alternative
554 P.O.D. payee, T.O.D. payee, or beneficiary or, if an alternative
555 P.O.D. payee, T.O.D. payee, or beneficiary is not named, to the
556 estate of the decedent.

557 (d) A financial institution or other person obligated to pay
558 an account described by subsection (b) that pays the account to



559 the former spouse or the former spouse's relative as P.O.D. payee,
560 T.O.D. payee, or beneficiary under a designation that is not
561 effective under subsection (b) is liable for payment of the
562 account to the person provided by subsection (c) only if:

563 (1) Before payment of the account to the designated
564 P.O.D. payee, T.O.D. payee, or beneficiary, the payor receives
565 written notice at the home office or principal office of the payor
566 from an interested person that the designation of the P.O.D.
567 payee, T.O.D. payee, or beneficiary is not effective under
568 subsection (b); and

569 (2) The payor has not interpleaded the account funds
570 into the registry of a court of competent jurisdiction in
571 accordance with the Mississippi Rules of Civil Procedure.

572 (e) This section does not affect the right of a former
573 spouse to assert an ownership interest in an undivided
574 multiple-party account described by subsection (b).

575 (f) This section does not apply to the disposition of a
576 beneficial interest in a retirement benefit or other financial
577 plan of a public retirement system.

578 **Section 10. Determination of Consanguinity.** (a) Two (2)
579 individuals are related to each other by consanguinity if:

580 (1) One (1) is a descendant of the other; or

581 (2) They share a common ancestor.

582 (b) An adopted child is considered to be a child of the
583 adoptive parent for this purpose.



584 **Section 11. Determination of affinity.** (a) Two (2)
585 individuals are related to each other by affinity if:
586 (1) They are married to each other; or
587 (2) The spouse of one (1) of the individuals is related
588 by consanguinity to the other individual.

589 (b) The ending of a marriage by divorce or the death of a
590 spouse ends relationships by affinity created by that marriage.

591 **Section 12. Pre-decree designation of ex-spouse as**
592 **beneficiary of life insurance.** (a) If a decree of divorce or
593 annulment is rendered after an insured has designated the
594 insured's spouse as a beneficiary under a life insurance policy in
595 force at the time of rendition, a provision in the policy in favor
596 of the insured's former spouse is not effective unless:

597 (1) The decree designates the insured's former spouse
598 as the beneficiary;

599 (2) The insured redesignates the former spouse as the
600 beneficiary after rendition of the decree; or

601 (3) The former spouse is designated to receive the
602 proceeds in trust for, on behalf of, or for the benefit of a child
603 or a dependent of either former spouse.

604 (b) If a designation is not effective under subsection (a),
605 the proceeds of the policy are payable to the named alternative
606 beneficiary or, if there is not a named alternative beneficiary,
607 to the estate of the insured.



608 (c) An insurer who pays the proceeds of a life insurance
609 policy issued by the insurer to the beneficiary under a
610 designation that is not effective under subsection (a) is liable
611 for payment of the proceeds to the person or estate provided by
612 subsection (b) only if:

613 (1) Before payment of the proceeds to the designated
614 beneficiary, the insurer receives written notice at the home
615 office of the insurer from an interested person that the
616 designation is not effective under subsection (a); and

617 (2) The insurer has not interpleaded the proceeds into
618 the registry of a court of competent jurisdiction in accordance
619 with the Mississippi Rules of Civil Procedure.

620 **Section 13. Pre-decree designation of ex-spouse as**
621 **beneficiary in retirement benefits and other financial plans. (a)**

622 If a decree of divorce or annulment is rendered after a spouse,
623 acting in the capacity of a participant, annuitant, or account
624 holder, has designated the other spouse as a beneficiary under an
625 individual retirement account, employee stock option plan, stock
626 option, or other form of savings, bonus, profit-sharing, or other
627 employer plan or financial plan of an employee or a participant in
628 force at the time of rendition, the designating provision in the
629 plan in favor of the other former spouse is not effective unless:

630 (1) The decree designates the other former spouse as
631 the beneficiary;



632 (2) The designating former spouse redesignates the
633 other former spouse as the beneficiary after rendition of the
634 decree; or

635 (3) The other former spouse is designated to receive
636 the proceeds or benefits in trust for, on behalf of, or for the
637 benefit of a child or dependent of either former spouse.

638 (b) If a designation is not effective under subsection (a),
639 the benefits or proceeds are payable to the named alternative
640 beneficiary or, if there is not a named alternative beneficiary,
641 to the designating former spouse.

642 (c) A business entity, employer, pension trust, insurer,
643 financial institution, or other person obligated to pay retirement
644 benefits or proceeds of a financial plan covered by this section
645 who pays the benefits or proceeds to the beneficiary under a
646 designation of the other former spouse that is not effective under
647 subsection (a) is liable for payment of the benefits or proceeds
648 to the person provided by subsection (b) only if:

649 (1) Before payment of the benefits or proceeds to the
650 designated beneficiary, the payor receives written notice at the
651 home office or principal office of the payor from an interested
652 person that the designation of the beneficiary or fiduciary is not
653 effective under subsection (a); and

654 (2) The payor has not interpleaded the benefits or
655 proceeds into the registry of a court of competent jurisdiction in
656 accordance with the Mississippi Rules of Civil Procedure.



657 (d) This section does not affect the right of a former
658 spouse to assert an ownership interest in an undivided pension,
659 retirement, annuity, or other financial plan described by this
660 section as provided by this chapter.

661 (e) This section does not apply to the disposition of a
662 beneficial interest in a retirement benefit or other financial
663 plan of a public retirement system as defined by Section 25-11-101
664 et seq.

665 **SECTION 3.** The following shall be codified as Section
666 27-10-51, Mississippi Code of 1972:

667 27-10-51. **Short title.** This chapter may be cited as the
668 Mississippi Uniform Estate Tax Apportionment Act.

669 **SECTION 4.** The following shall be codified as Section
670 27-10-53, Mississippi Code of 1972:

671 27-10-53. **Definitions.** In this chapter:

672 (1) "Apportionable estate" means the value of the gross
673 estate as finally determined for purposes of the estate tax to be
674 apportioned reduced by:

675 (A) Any claim or expense allowable as a deduction for
676 purposes of the tax;

677 (B) The value of any interest in property that, for
678 purposes of the tax, qualifies for a marital or charitable
679 deduction or otherwise is deductible or is exempt; and

680 (C) Any amount added to the decedent's gross estate
681 because of a gift tax on transfers made before death.



682 (2) "Chancery court" means the chancery court where the
683 decedent's will is probated in the State of Mississippi.

684 (3) "Estate tax" means a federal, state, or foreign tax
685 imposed because of the death of an individual and interest and
686 penalties associated with the tax. The term does not include an
687 inheritance tax, income tax, or generation-skipping transfer tax
688 other than a generation-skipping transfer tax incurred on a direct
689 skip taking effect at death.

690 (4) "Gross estate" means, with respect to an estate tax, all
691 interests in property subject to the tax.

692 (5) "Person" means an individual, corporation, business
693 trust, estate, trust, partnership, limited liability company,
694 association, joint venture, public corporation, government,
695 governmental subdivision, agency, or instrumentality, or any other
696 legal or commercial entity.

697 (6) "Ratable" means apportioned or allocated pro rata
698 according to the relative values of interests to which the term is
699 to be applied. "Ratably" has a corresponding meaning.

700 (7) "Time-limited interest" means an interest in property
701 which terminates on a lapse of time or on the occurrence or
702 nonoccurrence of an event or which is subject to the exercise of
703 discretion that could transfer a beneficial interest to another
704 person. The term does not include a cotenancy unless the
705 cotenancy itself is a time-limited interest. The term also does
706 not include an interest in property to the extent the beneficiary



707 has the sole right to accelerate, require or elect to receive a
708 distribution of the property.

709 (8) "Value" means, with respect to an interest in property,
710 fair market value as finally determined for purposes of the estate
711 tax that is to be apportioned, reduced by any outstanding debt
712 secured by the interest without reduction for taxes paid or
713 required to be paid or for any special valuation adjustment.

714 **SECTION 5.** The following shall be codified as Section
715 27-10-55, Mississippi Code of 1972:

716 27-10-55. **Apportionment by will or other dispositive**

717 **instrument.** (a) Except as otherwise provided in subsection (c),
718 the following rules apply:

719 (1) To the extent that a provision of a decedent's will
720 expressly and unambiguously directs the apportionment of an estate
721 tax, the tax must be apportioned accordingly.

722 (2) Any portion of an estate tax not apportioned
723 pursuant to paragraph (1) must be apportioned in accordance with
724 any provision of a revocable trust of which the decedent was the
725 settlor which expressly and unambiguously directs the
726 apportionment of an estate tax. If conflicting apportionment
727 provisions appear in two (2) or more revocable trust instruments,
728 the provision in the most recently dated instrument prevails. For
729 purposes of this paragraph:



730 (A) A trust is revocable if it was revocable
731 immediately after the trust instrument was executed, even if the
732 trust subsequently becomes irrevocable; and

733 (B) The date of an amendment to a revocable trust
734 instrument is the date of the amended instrument only if the
735 amendment contains an apportionment provision.

736 (3) If any portion of an estate tax is not apportioned
737 under paragraph (1) or (2), and a provision in any other
738 dispositive instrument expressly and unambiguously directs that
739 any interest in the property disposed of by the instrument is or
740 is not to be applied to the payment of the estate tax attributable
741 to the interest disposed of by the instrument, the provision
742 controls the apportionment of the tax to that interest.

743 (b) Subject to subsection (c), and unless the decedent
744 expressly and unambiguously directs the contrary, the following
745 rules apply:

746 (1) If an apportionment provision directs that a person
747 receiving an interest in property under an instrument is to be
748 exonerated from the responsibility to pay an estate tax that would
749 otherwise be apportioned to the interest, the tax attributable to
750 the exonerated interest must be apportioned ratably among all the
751 other persons receiving interests in the apportionable estate that
752 are not exonerated from apportionment of the tax.

753 (2) If an apportionment provision directs that an
754 estate tax is to be apportioned to an interest in property a



755 portion of which qualifies for a marital or charitable deduction,
756 the estate tax must first be apportioned ratably among the holders
757 of the portion that does not qualify for a marital or charitable
758 deduction and then apportioned ratably among the holders of the
759 deductible portion to the extent that the value of the
760 nondeductible portion is insufficient.

761 (3) Except as otherwise provided in paragraph (4), if
762 an apportionment provision directs that an estate tax be
763 apportioned to property in which one or more time-limited
764 interests exist, other than interests in specified property under
765 Section 27-10-63, the tax must be apportioned to the principal of
766 that property, regardless of the deductibility of some of the
767 interests in that property.

768 (4) If an apportionment provision directs that an
769 estate tax is to be apportioned to the holders of interests in
770 property in which one or more time-limited interests exist and a
771 charity has an interest that otherwise qualifies for an estate tax
772 charitable deduction, the tax must first be apportioned, to the
773 extent feasible, to interests in property that have not been
774 distributed to the persons entitled to receive the interests. No
775 tax shall be paid from a charitable remainder annuity trust or
776 charitable remainder unitrust described in Section 664 of the
777 Internal Revenue Code (26 U.S.C. Section 664) and created during
778 the decedent's life.



779 (c) A provision that apportions an estate tax is ineffective
780 to the extent that it increases the tax apportioned to a person
781 having an interest in the gross estate over which the decedent had
782 no power to transfer immediately before the decedent executed the
783 instrument in which the apportionment direction was made. For
784 purposes of this subsection, a testamentary power of appointment
785 is a power to transfer the property that is subject to the power.

786 **SECTION 6.** The following shall be codified as Section
787 27-10-57, Mississippi Code of 1972:

788 27-10-57. **Statutory apportionment of estate taxes.** To the
789 extent that apportionment of an estate tax is not controlled by an
790 instrument described in Section 27-10-55 and except as otherwise
791 provided in Sections 27-10-61 and 27-10-63, the following rules
792 apply:

793 (1) Subject to paragraphs (2), (3), and (4), the estate
794 tax is apportioned ratably to each person that has an interest in
795 the apportionable estate.

796 (2) A generation-skipping transfer tax incurred on a
797 direct skip taking effect at death is charged to the person to
798 which the interest in property is transferred.

799 (3) If property is included in the decedent's gross
800 estate because of Section 2044 of the Internal Revenue Code of
801 1986 or any similar estate tax provision, the difference between
802 the total estate tax for which the decedent's estate is liable and
803 the amount of estate tax for which the decedent's estate would



804 have been liable if the property had not been included in the
805 decedent's gross estate is apportioned ratably among the holders
806 of interests in the property. The balance of the tax, if any, is
807 apportioned ratably to each other person having an interest in the
808 apportionable estate.

809 (4) Except as otherwise provided in Section
810 27-10-55(b) (4) and except as to property to which Section 27-10-63
811 applies, an estate tax apportioned to persons holding interests in
812 property subject to a time-limited interest must be apportioned,
813 without further apportionment, to the principal of that property.

814 **SECTION 7.** The following shall be codified as Section
815 27-10-59, Mississippi Code of 1972:

816 27-10-59. **Credits and deferrals.** Except as otherwise
817 provided in Sections 27-10-61 and 27-10-63, the following rules
818 apply to credits and deferrals of estate taxes:

819 (1) A credit resulting from the payment of gift taxes
820 or from estate taxes paid on property previously taxed inures
821 ratably to the benefit of all persons to which the estate tax is
822 apportioned.

823 (2) A credit for state or foreign estate taxes inures
824 ratably to the benefit of all persons to which the estate tax is
825 apportioned, except that the amount of a credit for a state or
826 foreign tax paid by a beneficiary of the property on which the
827 state or foreign tax was imposed, directly or by a charge against
828 the property, inures to the benefit of the beneficiary.



829 (3) If payment of a portion of an estate tax is
830 deferred because of the inclusion in the gross estate of a
831 particular interest in property, the benefit of the deferral
832 inures ratably to the persons to which the estate tax attributable
833 to the interest is apportioned. The burden of any interest
834 charges incurred on a deferral of taxes and the benefit of any tax
835 deduction associated with the accrual or payment of the interest
836 charge is allocated ratably among the persons receiving an
837 interest in the property.

838 **SECTION 8.** The following shall be codified as Section
839 27-10-61, Mississippi Code of 1972:

840 27-10-61. **Insulated property; advancement of tax.** (a) In
841 this section:

842 (1) "Advanced fraction" means a fraction that has as
843 its numerator the amount of the advanced tax and as its
844 denominator the value of the interests in insulated property to
845 which that tax is attributable.

846 (2) "Advanced tax" means the aggregate amount of estate
847 tax attributable to interests in insulated property which is
848 required to be advanced by uninsulated holders under subsection
849 (c).

850 (3) "Insulated property" means property subject to a
851 time-limited interest which is included in the apportionable
852 estate but is unavailable for payment of an estate tax because of
853 impossibility or impracticability.



854 (4) "Uninsulated holder" means a person who has an
855 interest in uninsulated property.

856 (5) "Uninsulated property" means property included in
857 the apportionable estate other than insulated property.

858 (b) If an estate tax is to be advanced under subsection (c)
859 by persons holding interests in uninsulated property subject to a
860 time-limited interest other than property to which Section
861 27-10-63 applies, the tax must be advanced, without further
862 apportionment, from the principal of the uninsulated property.

863 (c) Subject to Section 27-10-67(b) and (d), an estate tax
864 attributable to interests in insulated property must be advanced
865 ratably by uninsulated holders. If the value of an interest in
866 uninsulated property is less than the amount of estate taxes
867 otherwise required to be advanced by the holder of that interest,
868 the deficiency must be advanced ratably by the persons holding
869 interests in properties that are excluded from the apportionable
870 estate under Section 27-10-53(1)(B) as if those interests were in
871 uninsulated property.

872 (d) A court having jurisdiction to determine the
873 apportionment of an estate tax may require a beneficiary of an
874 interest in insulated property to pay all or part of the estate
875 tax otherwise apportioned to the interest if the court finds that
876 it would be substantially more equitable for that beneficiary to
877 bear the tax liability personally than for that part of the tax to
878 be advanced by uninsulated holders.



879 (e) When a distribution of insulated property is made, each
880 uninsured holder may recover from the distributee a ratable
881 portion of the advanced fraction of the property distributed. To
882 the extent that undistributed insulated property ceases to be
883 insulated, each uninsured holder may recover from the property a
884 ratable portion of the advanced fraction of the total
885 undistributed property.

886 (f) Upon payment by an uninsured holder of estate tax
887 required to be advanced, a court may require the beneficiary of an
888 interest in insulated property to provide a bond or other
889 security, including a recordable lien on the property of the
890 beneficiary, for repayment of the advanced tax.

891 **SECTION 9.** The following shall be codified as Section
892 27-10-63, Mississippi Code of 1972:

893 27-10-63. **Apportionment and recapture of special elective**
894 **benefits.** (a) In this section:

895 (1) "Special elective benefit" means a reduction in an
896 estate tax obtained by an election for:

897 (A) A reduced valuation of specified property that
898 is included in the gross estate;

899 (B) A deduction from the gross estate, other than
900 a marital or charitable deduction, allowed for specified property;
901 or

902 (C) An exclusion from the gross estate of
903 specified property.



904 (2) "Specified property" means property for which an
905 election has been made for a special elective benefit.

906 (b) If an election is made for one or more special elective
907 benefits, an initial apportionment of a hypothetical estate tax
908 must be computed as if no election for any of those benefits had
909 been made. The aggregate reduction in estate tax resulting from
910 all elections made must be allocated among holders of interests in
911 the specified property in the proportion that the amount of
912 deduction, reduced valuation, or exclusion attributable to each
913 holder's interest bears to the aggregate amount of deductions,
914 reduced valuations, and exclusions obtained by the decedent's
915 estate from the elections. If the estate tax initially
916 apportioned to the holder of an interest in specified property is
917 reduced to zero, any excess amount of reduction reduces ratably
918 the estate tax apportioned to other persons that receive interests
919 in the apportionable estate.

920 (c) An additional estate tax imposed to recapture all or
921 part of a special elective benefit must be charged to the persons
922 that are liable for the additional tax under the law providing for
923 the recapture.

924 **SECTION 10.** The following shall be codified as Section
925 27-10-65, Mississippi Code of 1972:

926 27-10-65. **Securing payment of estate tax from property in**
927 **possession of fiduciary.** (a) A fiduciary may defer a



928 distribution of property until the fiduciary is satisfied that
929 adequate provision for payment of the estate tax has been made.

930 (b) A fiduciary may withhold from a distributee an amount
931 equal to the amount of estate tax apportioned to an interest of
932 the distributee and the estate tax required to be advanced by the
933 distributee.

934 (c) As a condition to a distribution, a fiduciary may
935 require the distributee to provide a bond or other security for
936 the portion of the estate tax apportioned to the distributee and
937 also for the estate tax required to be advanced by the
938 distributee.

939 **SECTION 11.** The following shall be codified as Section
940 27-10-67, Mississippi Code of 1972:

941 27-10-67. **Collection of estate tax by fiduciary.** (a) A
942 fiduciary responsible for payment of an estate tax may collect
943 from any person the estate tax apportioned to and the tax required
944 to be advanced by the person.

945 (b) Except as otherwise provided in Section 27-10-61, any
946 estate tax due from a person that cannot be collected from the
947 person may be collected by the fiduciary from other persons in the
948 following order of priority:

949 (1) Any person having an interest in the apportionable
950 estate which is not exonerated from the tax;

951 (2) Any other person having an interest in the
952 apportionable estate;



953 (3) Any person having an interest in the gross estate.

954 (c) A domiciliary fiduciary may recover from an ancillary
955 personal representative the estate tax apportioned to the property
956 controlled by the ancillary personal representative.

957 (d) The total tax collected from a person pursuant to this
958 act may not exceed the value of the person's interest.

959 **SECTION 12.** The following shall be codified as Section
960 27-10-69, Mississippi Code of 1972:

961 27-10-69. **Right of reimbursement.** (a) A person required
962 under Section 27-10-67 to pay an estate tax greater than the
963 amount due from the person under Section 27-10-55 or 27-10-57 has
964 a right to reimbursement from another person to the extent that
965 the other person has not paid the tax required by Section 27-10-55
966 or 27-10-57 and a right to reimbursement ratably from other
967 persons to the extent that each has not contributed a portion of
968 the amount collected under Section 27-10-67(b). The right to
969 reimbursement includes the right to receive interest on the amount
970 of the estate tax payment from the date of the payment to the date
971 of reimbursement at the interest rate that would be charged during
972 such period on an estate tax deficiency by the taxing authority
973 that imposed the estate tax. The right of reimbursement also
974 includes the reasonable costs of collection including attorney's
975 fees.

976 (b) A fiduciary may enforce the right of reimbursement under
977 subsection (a) on behalf of the person that is entitled to the



978 reimbursement and shall take reasonable steps to do so if
979 requested by the person.

980 **SECTION 13.** The following shall be codified as Section
981 27-10-71, Mississippi Code of 1972:

982 27-10-71. **Action to determine or enforce act.** (a) The
983 chancery court has jurisdiction and all power necessary to make
984 the prorations and the orders directing the payment of amounts of
985 tax contemplated by this chapter.

986 (b) Such jurisdiction may be invoked by petition filed in
987 the chancery court by an executor, administrator, temporary
988 administrator, trustee or other person acting in a fiduciary
989 capacity, transferee, beneficiary of the gross estate, or any
990 other person having such an interest as may in the judgment of the
991 chancery court entitle such person to file such a petition.

992 (c) The chancery court, upon making a determination as
993 provided in this chapter, shall make a decree or order directing
994 the executor, administrator or other fiduciary to charge the
995 prorated amounts against the persons against whom the tax has been
996 so prorated, insofar as such person is in possession of property
997 or interests of such persons against whom such charge has been
998 made, and summarily directing all other persons against whom the
999 tax has been so prorated or who are in possession of property or
1000 interests of such persons to make payment of such prorated amounts
1001 to such executor, administrator or other fiduciary or to another
1002 person who has paid such tax.



1003 **SECTION 14.** The following shall be codified as Section
1004 27-10-73, Mississippi Code of 1972:

1005 27-10-73. **Uniformity of application and construction.** In
1006 applying and construing this chapter, consideration must be given
1007 to the need to promote uniformity of the law with respect to its
1008 subject matter among states that enact it.

1009 **SECTION 15.** The following shall be codified as Section
1010 27-10-75, Mississippi Code of 1972:

1011 27-10-75. **Severability.** If any provision of this chapter or
1012 the application thereof to any person or circumstance is held
1013 invalid, the invalidity does not affect other provisions or
1014 applications of this chapter which can be given effect without the
1015 invalid provision or application, and to this end the provisions
1016 of this chapter are severable.

1017 **SECTION 16.** The following shall be codified as Section
1018 27-10-77, Mississippi Code of 1972:

1019 27-10-77. **Delayed application.** (a) Sections 27-10-51
1020 through 27-10-77 do not apply to the estate of a decedent who dies
1021 on or within one (1) year after July 1, 2019, nor with respect to
1022 a decedent who dies more than one (1) year after July 1, 2019, if
1023 the decedent continuously lacked testamentary capacity from the
1024 expiration of the one-year period until the date of death.

1025 (b) With respect to a decedent who dies on or after July 1,
1026 2019, to whom Sections 27-10-51 through 27-10-77 do not apply,



1027 estate taxes must be apportioned pursuant to the law in effect on
1028 June 30, 2019.

1029 (c) Notwithstanding the provisions of subsection (a) and
1030 (b), this chapter applies with respect to a decedent to whom the
1031 provisions would not otherwise apply if the decedent expressly and
1032 unambiguously directs that the provisions shall apply to such
1033 decedent.

1034 **SECTION 17.** This Section 17 provides for foreign personal
1035 representatives and ancillary administration.

1036 **Section 1.** (a) "Local administration" means administration
1037 by a personal representative appointed in this state pursuant to
1038 appointment proceedings.

1039 (b) "Personal representative" means an executor, an
1040 administrator with or without the will annexed, or other
1041 representative authorized in a court of competent jurisdiction to
1042 conduct an estate administration.

1043 (c) "Local personal representative" includes any
1044 personal representative appointed in this state by appointment
1045 proceedings and excludes foreign personal representatives who
1046 acquire the power of a local personal representative under Section
1047 5 of Section 17 of this act.

1048 (d) "Resident creditor" means a person domiciled in, or
1049 doing business in this state, who is, or could be, a claimant
1050 against an estate of a non-resident decedent.



1051 (e) "Foreign personal representative" means a personal
1052 representative appointed by another jurisdiction.

1053 (f) "Domiciliary foreign personal representative" means
1054 a personal representative appointed by another jurisdiction who
1055 has obtained all powers of a local personal representative in
1056 accordance with this chapter.

1057 **Section 2.** At any time after the expiration of sixty (60)
1058 days from the death of a nonresident decedent, any person indebted
1059 to the estate of the nonresident decedent or having possession or
1060 control of personal property, or of an instrument evidencing a
1061 debt, obligation, stock or chose in action belonging to the estate
1062 of the nonresident decedent may pay the debt, deliver the personal
1063 property, or the instrument evidencing the debt, obligation, stock
1064 or chose in action, to the domiciliary foreign personal
1065 representative of the nonresident decedent upon being presented
1066 with proof of his appointment, including the admitted will and
1067 letters testamentary or letters of administration or substantial
1068 equivalent, authenticated under the Acts of Congress pursuant to
1069 28 U.S.C.A. Section 1739, and an affidavit made by or on behalf of
1070 the personal representative stating:

1071 (a) The date of the death of the nonresident decedent;

1072 (b) That no local administration, or application or
1073 petition therefor, is pending in this state; and

1074 (c) That the domiciliary foreign personal
1075 representative is entitled to payment or delivery.



1076 **Section 3.** Payment or delivery made in good faith on the
1077 basis of the proof of authority, including the admitted will and
1078 letters testamentary or letters of administration or substantial
1079 equivalent, authenticated under the Acts of Congress under 28
1080 U.S.C.A. Section 1739, and affidavit releases the debtor or person
1081 having possession of the personal property to the same extent as
1082 if payment or delivery had been made to a local personal
1083 representative.

1084 **Section 4.** Payment or delivery under Section 1 of Section 17
1085 of this act may not be made if a resident creditor of the
1086 nonresident decedent has notified the debtor of the nonresident
1087 decedent or the person having possession of the personal property
1088 belonging to the nonresident decedent that the debt should not be
1089 paid nor the property delivered to the domiciliary foreign
1090 personal representative.

1091 **Section 5.** If no local administration or application or
1092 petition therefor is pending in this state, a domiciliary foreign
1093 personal representative may file with a court in this state in a
1094 county in which property belonging to the decedent is located,
1095 authenticated copies of his appointment, including the admitted
1096 will and letters testamentary or letters of administration or
1097 substantial equivalent, authenticated under the Acts of Congress
1098 pursuant to 28 U.S.C.A. Section 1739, and any official bond he has
1099 given. A domiciliary foreign personal representative is subject



1100 to the estate administration requirements and obligations set
1101 forth in Title 91, Chapter 7, Mississippi Code of 1972.

1102 **Section 6.** A domiciliary foreign personal representative who
1103 has complied with Section 5 of Section 17 of this act may exercise
1104 as to assets in this state all powers of a local personal
1105 representative, and may maintain actions and proceedings in this
1106 state subject to any conditions imposed upon nonresident parties
1107 generally.

1108 **Section 7.** The power of a domiciliary foreign personal
1109 representative under Section 1 or Section 5 of Section 17 of this
1110 act shall be exercised only if there is no administration or
1111 application therefor pending in this state. An application or
1112 petition for local administration of the estate terminates the
1113 power of the foreign personal representative to act under Section
1114 5 of Section 17 of this act, but the local court may allow the
1115 foreign personal representative to exercise limited powers to
1116 preserve the estate. No person who before receiving actual notice
1117 of a pending local administration has changed his position in
1118 reliance upon the powers of a foreign personal representative
1119 shall be prejudiced by reason of the application or petition for,
1120 or grant of, local administration. The local personal
1121 representative is subject to all duties and obligations which have
1122 accrued by virtue of the exercise of the powers by the foreign
1123 personal representative and may be substituted for him in any
1124 action or proceedings in this state.



1125 **Section 8.** In respect to a nonresident decedent, the
1126 provisions of Title 91, Chapter 7, Mississippi Code of 1972,
1127 govern:

1128 (1) Proceedings, if any, in a court of this state for
1129 probate of the will, appointment, removal, supervision, and
1130 discharge of the local personal representative, and any other
1131 order concerning the estate; and

1132 (2) The status, powers, duties and liabilities of any
1133 local personal representative and the rights of claimants,
1134 purchasers, distributees and others in regard to a local
1135 administration.

1136 **Section 9.** A foreign personal representative submits
1137 personally to the jurisdiction of the courts of this state in any
1138 proceeding relating to the estate by: (a) filing authenticated
1139 copies of his appointment as provided in Section 2 of Section 17
1140 of this act, (b) receiving payment of money or taking delivery of
1141 personal property under Section 2 of Section 17 of this act, or
1142 (c) doing any act as a personal representative in this state that
1143 would have given the state jurisdiction over him as an individual.
1144 Jurisdiction under paragraph (a) is limited to the money or value
1145 of personal property collected.

1146 **Section 10.** In addition to jurisdiction conferred by Section
1147 8 of Section 17 of this act, a foreign personal representative is
1148 subject to the jurisdiction of the courts of this state to the



1149 same extent that his decedent was subject to jurisdiction
1150 immediately prior to death.

1151 **Section 11.** (1) Service of process may be made upon the
1152 foreign personal representative by registered or certified mail,
1153 addressed to his last reasonably ascertainable address, requesting
1154 a return receipt signed by addressee only. Notice by ordinary
1155 first-class mail is sufficient if registered or certified mail
1156 service to the addressee is unavailable. Service may be made upon
1157 a foreign personal representative in the manner in which service
1158 could have been made under other laws of this state on either the
1159 foreign personal representative or his decedent immediately before
1160 death.

1161 (2) If service is made upon a foreign personal
1162 representative as provided in subsection (1), he shall be allowed
1163 at least thirty (30) days within which to appear or respond.

1164 **Section 12.** An adjudication rendered in any jurisdiction in
1165 favor of or against any foreign personal representative of the
1166 estate is as binding on the local personal representative as if he
1167 were a party to the adjudication.

1168 **SECTION 18.** The following shall be codified as Section
1169 91-9-521, Mississippi Code of 1972:

1170 91-9-521. **Application of Article 11; rights of beneficiary's**
1171 **creditor or assignee.** This Article 11 applies to a creditor's or
1172 assignee's claims and ability to reach mandatory, support and
1173 discretionary interests regardless of whether such interests are



1174 subject to a spendthrift provision. To the extent not otherwise
1175 prohibited by this Article 11, the court may authorize a creditor
1176 or assignee of the beneficiary to reach the beneficiary's
1177 distribution interest by attachment of present or future
1178 distributions to or for the benefit of the beneficiary or other
1179 means. The court may limit the award to such relief as is
1180 appropriate under the circumstances.

1181 **SECTION 19.** The following shall be codified as Section
1182 91-9-523, Mississippi Code of 1972:

1183 91-9-523. **Spendthrift provision.** (1) Except as provided in
1184 Section 91-8-505, if the trust instrument provides that a
1185 beneficiary's interest in a trust is not subject to voluntary or
1186 involuntary transfer, the beneficiary's interest the trust may not
1187 be transferred and is not subject to the enforcement of a money
1188 judgment until paid to the beneficiary.

1189 (2) A term of a trust providing that the interest of a
1190 beneficiary is held subject to a "spendthrift trust," or words of
1191 similar import, is sufficient to restrain both voluntary and
1192 involuntary transfer of the beneficiary's interest.

1193 (3) A spendthrift provision applies to all beneficial
1194 interests, including distribution interests whether with respect
1195 to income or principal or both, and remainder interests.

1196 (4) A beneficiary may not transfer an interest in a trust in
1197 violation of a valid spendthrift provision and a creditor or
1198 assignee of the beneficiary may not reach any of, the interest, or



1199 a present, future or prospective distribution at the trust level.
1200 Similarly, no creditor or assignee of the beneficiary may force
1201 any distribution from the trust. This subsection (4) remains
1202 applicable regardless of the beneficiary's potential right to
1203 force a distribution under Section 91-8-814.

1204 (5) Notwithstanding any other provision of this section to
1205 the contrary, regardless of whether a beneficiary has any
1206 outstanding creditor, a trustee, cotrustee or other fiduciary of a
1207 trust subject to a spendthrift provision may directly pay any
1208 expense on behalf of such beneficiary and may exhaust the income
1209 and principal of the trust for the benefit of such beneficiary. No
1210 trustee, cotrustee or other fiduciary is liable to any creditor
1211 for paying the expenses of a beneficiary under a trust subject to
1212 a spendthrift provision. This subsection (5) remains applicable
1213 regardless of whether the beneficiary for whom such direct payment
1214 was made held a mandatory, support, discretionary or remainder
1215 interest.

1216 **SECTION 20.** The following shall be codified as Section
1217 91-9-525, Mississippi Code of 1972:

1218 91-9-525. **Discretionary interests; effect thereof.** (1) A
1219 discretionary interest is neither a property interest nor an
1220 enforceable right; it is a mere expectancy.

1221 (2) Relative to a discretionary interest, whether or not a
1222 trust contains a spendthrift provision:



1223 (a) No creditor or assignee shall force or otherwise
1224 reach a distribution with regard to a discretionary interest;

1225 (b) No creditor or assignee shall require a trustee,
1226 cotrustee or other fiduciary to exercise the trustee's,
1227 cotrustee's or other fiduciary's discretion to make a distribution
1228 with regard to a discretionary interest;

1229 (c) Regardless of whether a beneficiary has any
1230 outstanding creditors or assignees, a trustee, cotrustee or other
1231 fiduciary of a discretionary interest may directly pay any expense
1232 on behalf of such beneficiary and may exhaust the income and
1233 principal of the trust for the benefit of such beneficiary;

1234 (d) No trustee, cotrustee or other fiduciary is liable
1235 to any creditor or assignee for paying the expenses of a
1236 beneficiary of a discretionary interest;

1237 (e) (i) Regardless of whether a beneficiary holding a
1238 discretionary interest is also a trustee, cotrustee or other
1239 fiduciary, subsections (2)(a) through (d) remain applicable if:

1240 1. The beneficiary-fiduciary does not have
1241 the discretion to make or participate in making distributions to
1242 such beneficiary-fiduciary;

1243 2. The beneficiary-fiduciary's discretion to
1244 make or participate in making distributions to such
1245 beneficiary-fiduciary is limited by an ascertainable standard; or

1246 3. The beneficiary-fiduciary's discretion to
1247 make or participate in making distributions to such



1248 beneficiary-fiduciary is exercisable only with the consent of a
1249 cotrustee or another person holding an adverse interest.

1250 (ii) A creditor or assignee may compel or
1251 otherwise reach a distribution only to the extent the creditor or
1252 assignee may compel or otherwise reach a distribution if the
1253 beneficiary was not acting as a trustee, cotrustee or other
1254 fiduciary.

1255 **SECTION 21.** The following shall be codified as Section
1256 91-9-527, Mississippi Code of 1972:

1257 91-9-527. **Creditors' claims against settlor.** (1) Whether
1258 or not the terms of a trust contain a spendthrift provision, the
1259 following rules apply:

1260 (a) During the lifetime of the settlor, the property of
1261 a revocable trust is subject to claims of the settlor's creditors.

1262 (b) Except as provided in the Mississippi Qualified
1263 Disposition in Trust Act and subsections (1)(c) through (e)
1264 regarding an irrevocable special needs trust, a creditor or
1265 assignee of the settlor of an irrevocable trust may reach the
1266 maximum amount that can be distributed to or for the settlor's
1267 benefit. If a trust has more than one (1) settlor, the amount the
1268 creditor or assignee of a particular settlor may reach may not
1269 exceed the settlor's interest in the portion of the trust
1270 attributable to that settlor's contribution.

1271 (c) For the purposes of this section, "irrevocable
1272 special needs trust" means an irrevocable trust established for



1273 the benefit of one or more disabled persons, which includes, but
1274 is not limited to, an individual who is disabled as defined in 42
1275 U.S.C. Section 1382c(a), as well as an individual who is disabled
1276 as defined in any similar federal, state or other jurisdictional
1277 law or regulation, or has a condition that is substantially
1278 equivalent to one that qualifies the person as disabled under such
1279 a provision, even if not officially found to be disabled by a
1280 governmental body, if one (1) of the purposes of the trust,
1281 expressed in the trust instrument or implied from the trust
1282 instrument, is to allow the disabled person to qualify or continue
1283 to qualify for public, charitable or private benefits that might
1284 otherwise be available to the disabled person. The existence of
1285 one or more nondisabled remainder beneficiaries of the trust does
1286 not disqualify it as an irrevocable special needs trust for the
1287 purposes of this section.

1288 (d) No creditor or assignee of the settlor of an
1289 irrevocable special needs trust, as defined in subdivision (a) (3),
1290 may reach or compel distributions from such special needs trust,
1291 to or for the benefit of the settlor of such special needs trust,
1292 or otherwise, regardless of whether or not such irrevocable
1293 special needs trust complies with, and irrespective of the
1294 requirements of, the Mississippi Qualified Disposition in Trust
1295 Act.

1296 (e) Notwithstanding any law to the contrary, neither a
1297 creditor nor any other person shall have any claim or cause of



1298 action against the trustee or other fiduciary, or an advisor of an
1299 irrevocable special needs trust. For purposes of this subsection
1300 (1)(e), an advisor of an irrevocable special needs trust includes
1301 any person involved in the counseling, drafting, preparation,
1302 execution or funding of an irrevocable special needs trust.

1303 (f) After the death of a settlor, and subject to the
1304 settlor's right to direct the source from which liabilities will
1305 be paid, the property of a trust that was revocable immediately
1306 preceding the settlor's death is subject to claims of the
1307 settlor's creditors, costs of administration of the settlor's
1308 estate and the expenses of the settlor's funeral and disposal of
1309 remains subject to the following:

1310 (i) With respect to claims, expenses, and taxes in
1311 connection with the settlement of the settlor's estate, any claim
1312 of a creditor that would be barred against the fiduciary of a
1313 settlor's estate, the estate of the settlor, or any creditor or
1314 beneficiary of the settlor's estate shall be barred against the
1315 trust property of a trust that was revocable at the settlor's
1316 death, the trustee of the revocable trust, and the creditors and
1317 beneficiaries of the trust.

1318 (ii) Unless a personal representative of the
1319 settlor's estate has been appointed or an application or petition
1320 for appointment of a personal representative of the settlor's
1321 estate is pending, the trustee at any time may give notice to any
1322 person the trustee has reason to believe may have a claim against



1323 the settlor at death, at their last-known address The notice
1324 shall contain the name and address of the trustee to whom the
1325 claim must be presented and provide information that failure to
1326 present the claim to the trustee within ninety (90) days of the
1327 date of the notice will forever bar such claim. If the person
1328 fails to present the claim in writing within ninety (90) days from
1329 the date of the notice, then the person shall be forever barred
1330 from asserting or recovering on the claim from the trustee, the
1331 trust property and the creditors and beneficiaries of the trust.
1332 Any person who presents a claim on or before the date specified in
1333 the notice may not later increase the claim following the
1334 expiration of the ninety-day period.

1335 (iii) Unless a personal representative of the
1336 settlor's estate has been appointed or an application or petition
1337 for appointment of a personal representative of the settlor's
1338 estate is pending, a trustee may also publish in some newspaper in
1339 the county of the decedent's last residence a notice requiring all
1340 persons having unknown claims against the settlor to present their
1341 claims to the trustee, which notice shall state that failure to
1342 present the claim to the trustee within ninety (90) days of the
1343 date after the first publication of such notice will forever bar
1344 the claim. The notice shall be published for three (3) consecutive
1345 weeks, and proof of publication shall be maintained with the books
1346 and records of the trust. If a person fails to present a claim in
1347 writing within ninety (90) days from the date of first



1348 publication, then the person shall be forever barred from
1349 asserting or recovering on the claim from the trustee, the trust
1350 property and the creditors and beneficiaries of the trust. Any
1351 person who presents a claim on or before ninety (90) days from
1352 first publication may not later increase the claim following the
1353 expiration of the ninety-day period.

1354 (iv) In addition to subsections (1)(f)(ii) and
1355 (1)(f)(iii), if a claim is not presented in writing to the
1356 personal representative of the settlor's estate or to the trustee:
1357 1. Within six (6) months from the date of the appointment of the
1358 initial personal representative of the settlor's estate; or 2. If
1359 no personal representative is appointed within six (6) months from
1360 the settlor's date of death and a claim is not presented in
1361 writing to the trustee within six (6) months from the settlor's
1362 date of death, then no trustee shall be chargeable for any assets
1363 that the trustee may pay or distribute in good faith in
1364 satisfaction of any lawful claims, expenses, or taxes or to any
1365 beneficiary before the claim was presented. A payment or
1366 distribution of assets by a trustee is deemed to have been made in
1367 good faith unless the creditor can prove that the trustee had
1368 actual knowledge of the claim at the time of the payment or
1369 distribution. The six-month period shall not be interrupted or
1370 affected by the death, resignation, or removal of a trustee,
1371 except that the time during which there is no trustee in office
1372 shall not be counted as part of the period.



1373 (v) Any claim presented to the trustee pursuant to
1374 subsection (1)(f)(ii) or (1)(f)(iii) shall contain substantially
1375 the same information as required in Section 91-7-149.

1376 (vi) The provisions of Section 91-7-261 detailing
1377 the priority of payment of claims, expenses, and taxes from the
1378 probate estate of a decedent shall apply to a revocable trust to
1379 the extent the assets of the settlor's probate estate are
1380 inadequate and the personal representative or creditor or taxing
1381 authority of the settlor's estate has perfected its right to
1382 collect from the settlor's revocable trust.

1383 (vii) If a personal representative has been
1384 appointed for the settlor's estate, then assets of the trust shall
1385 abate pari passu with assets of the settlor's estate. If no
1386 personal representative has been appointed for the settlor's
1387 estate, then assets of the trust shall abate in the same order of
1388 preference as would apply to a decedent's estate.

1389 (viii) Nothing in this paragraph (f) shall
1390 obligate a trustee to seek appointment of a personal
1391 representative of a settlor's estate and a trustee is not liable
1392 to any beneficiary or other third party for failure to do so.

1393 (2) For purposes of this section during the period a power
1394 of withdrawal may be exercised or upon the lapse, release, or
1395 waiver of the power, the holder is treated as the settlor of the
1396 trust only to the extent the value of the property affected by the
1397 lapse, release, or waiver exceeds the greater of:



1398 (a) (i) The amount specified in Section 2041(b)(2) or
1399 2514(e) of the Internal Revenue Code of 1986 (26 U.S.C. Section
1400 2041(b)(2) and Section 2514(e));

1401 (ii) If the donor of the property subject to
1402 holder's power of withdrawal is not married at the time of the
1403 transfer of property to the trust, the amount specified in Section
1404 2503(b) of the Internal Revenue Code of 1986 (26 U.S.C. Section
1405 2503(b)); or

1406 (iii) If the donor of the property subject to
1407 holder's power of withdrawal is married at the time of the
1408 transfer of property to the trust, twice the amount specified in
1409 Section 2503(b) of the Internal Revenue Code of 1986 (26 U.S.C.
1410 Section 2503(b)).

1411 (b) (i) A power to withdraw shall not be considered to
1412 exceed the greater of the amounts specified in subsection (2)(a)
1413 through (c) if the amount subject to a withdrawal right granted to
1414 the holder in any calendar year does not exceed the greater of
1415 such amounts even if the total amount subject to the holder's
1416 power to withdraw exceeds the greater of such amounts in any
1417 subsequent calendar year.

1418 (ii) Except to the extent provided in this
1419 subsection (2), a person who is the holder of a power of
1420 withdrawal is not considered a settlor of the trust by failing to
1421 exercise the power of withdrawal, releasing the power of
1422 withdrawal, or waiving the power of withdrawal.



1423 (3) For purposes of subsection (1) (b):

1424 (a) The power of a trustee of an irrevocable trust,
1425 whether arising under the trust agreement or any other provision
1426 of the law, to make a distribution to or for the benefit of a
1427 settlor for the purpose of reimbursing the settlor in an amount
1428 equal to any income taxes payable on any portion of the trust
1429 principal and income that are includable in the settlor's personal
1430 income under applicable law, as well as distributions made by the
1431 trustee pursuant to such authority; and

1432 (b) The power of the settlor to exercise any of the
1433 powers described in Section 675 of the Internal Revenue Code of
1434 1986 (26 U.S.C. Section 675) shall not be considered an amount
1435 that may be distributed to or for the settlor's benefit.

1436 (4) Property contributed to the following trusts is not
1437 considered to have been contributed by the settlor, and a person
1438 who would otherwise be treated as a settlor or deemed settlor of
1439 the following trusts may not be treated as a settlor:

1440 (a) An irrevocable inter vivos marital trust if:

1441 (i) The settlor is a beneficiary of the trust
1442 after the death of the settlor's spouse; and

1443 (ii) The trust is treated as:

1444 1. Qualified terminable interest property
1445 under Section 2523(f), Internal Revenue Code of 1986; or

1446 2. A general power of appointment trust
1447 under Section 2523(e), Internal Revenue Code of 1986;



1448 (b) An irrevocable inter vivos trust of which the
1449 settlor's spouse is a beneficiary if the settlor is a beneficiary
1450 of the trust after the death of the settlor's spouse; or

1451 (c) An irrevocable trust for the benefit of any person
1452 to the extent that the property of the trust was subject to a
1453 power of appointment in another person, whether the settlor's
1454 interest was created by the lapse or exercise of such power.

1455 The effect of this subsection shall be that the power of a
1456 trustee, and any benefit resulting to the settlor, whether arising
1457 under the trust agreement or any other provision of the law, to
1458 make a distribution to or for the benefit of a settlor or to
1459 otherwise permit the settlor to use or benefit from trust property
1460 following the death of the settlor's spouse, shall not be
1461 considered an amount that may be distributed to or for the
1462 settlor's benefit for purposes of subsection (1)(b).

1463 (5) A beneficiary shall not be considered to be a settlor,
1464 to have made a voluntary or involuntary transfer of the
1465 beneficiary's interest in the trust, or to have the power to make
1466 a voluntary or involuntary transfer of the beneficiary's interest
1467 in the trust, merely because the beneficiary holds, exercises,
1468 waives, releases, or allows to lapse:

1469 (a) A presently exercisable power to:

1470 (i) Consume, invade, appropriate, or distribute
1471 property to or for the benefit of the beneficiary, if the power
1472 is:



1473 1. Exercisable only on consent of another
1474 person holding an interest adverse to the beneficiary's interest;
1475 or

1476 2. Limited by an ascertainable standard,
1477 including health, education, support, or maintenance of the
1478 beneficiary; or

1479 (ii) Appoint any property of the trust to or for
1480 the benefit of a person other than the beneficiary, a creditor of
1481 the beneficiary, the beneficiary's estate, or a creditor of the
1482 beneficiary's estate;

1483 (b) A testamentary power of appointment; or

1484 (c) A presently exercisable right described by
1485 subsection (2).

1486 (6) For purposes of subsection (1)(b) and subsection (7), a
1487 person who becomes a beneficiary of a trust due to the exercise of
1488 a power of appointment by someone other than such person shall not
1489 be considered a settlor of the trust.

1490 (7) (a) Notwithstanding Section 15-3-115, no person shall
1491 bring an action with respect to a transfer of property to a
1492 spendthrift trust if the person is a creditor when the transfer is
1493 made, unless the action is commenced within the later of two (2)
1494 years after the transfer is made or six (6) months after the
1495 person discovers or reasonably should have discovered the
1496 transfer; and

1497 (b) If subsection (7)(a) applies:



1498 (i) A person shall be deemed to have discovered
1499 the existence of a transfer at the time any public record is made
1500 of the transfer, including but not limited to, a conveyance of
1501 real property that is recorded in the office of the county
1502 register of deeds of the county in which the property is located
1503 or the filing of a financing statement Uniform Commercial Code, or
1504 the equivalent recording or filing of either with the appropriate
1505 person or official under the laws of a jurisdiction other than
1506 this state;

1507 (ii) No creditor shall bring an action with
1508 respect to a transfer of property to a spendthrift trust unless
1509 that creditor proves by clear and convincing evidence that the
1510 settlor's transfer to the trust was made with the intent to
1511 defraud that specific creditor; and

1512 1. Notwithstanding any law to the contrary,
1513 neither a creditor nor any other person shall have any claim or
1514 cause of action against the trustee or other fiduciary or an
1515 advisor of a spendthrift trust if that claim or cause of action is
1516 based in any way on any person availing themselves of the benefits
1517 of this subsection (7);

1518 2. For purposes of subsection (7)(b)(ii), an
1519 advisor of a spendthrift trust includes, but is not limited to,
1520 any person involved in the counseling, drafting, preparation,
1521 execution or funding of a spendthrift trust;



1522 (iii) For purposes of subsection (7) (b) (ii) 1.,
1523 counseling, drafting, preparation, execution or funding of a
1524 spendthrift trust includes the counseling, drafting, preparation,
1525 execution and funding of a limited partnership, a limited
1526 liability company or any other type of entity if interests in the
1527 limited partnership, limited liability company or other entity are
1528 subsequently transferred to a spendthrift trust;

1529 (c) Notwithstanding subsection (7) (b) (ii), in the same
1530 manner as provided other than by this section to trusts in
1531 general, a beneficiary, settlor, cotrustee, trust advisor or trust
1532 protector retains the right to bring a claim against a trustee or
1533 against another cotrustee, trust advisor, trust protector or any
1534 of their predecessors; however, no such claim shall arise solely
1535 because a person availed themselves, or attempted to avail
1536 themselves, of the benefits of this subsection (7);

1537 (d) If more than one transfer of property is made to a
1538 spendthrift trust, the subsequent transfer of property to the
1539 spendthrift trust shall be disregarded for the purpose of
1540 determining whether a person may bring an action pursuant to this
1541 subsection (7) with respect to a prior transfer of property to the
1542 spendthrift trust; and any distribution to a beneficiary from the
1543 spendthrift trust shall be deemed to have been made from the most
1544 recent transfer made to the spendthrift trust;

1545 (e) With the exception of any claim brought under
1546 subsection (7) (c), notwithstanding any other law, no action of any



1547 kind, including, without limitation, an action to enforce a
1548 judgment entered by a court or other body having adjudicative
1549 authority, shall be brought at law or in equity against the
1550 trustee, other fiduciary or advisor of a spendthrift trust if, as
1551 of the date such action is brought, an action by a creditor with
1552 respect to a transfer of property to the spendthrift trust would
1553 be barred pursuant to this subsection (7); and

1554 (f) This subsection (7) shall not abridge the rights of
1555 a creditor, to the extent otherwise provided by this section, to
1556 reach the maximum amount that can be distributed to or for the
1557 settlor's benefit under a spendthrift trust.

1558 **SECTION 22.** The following shall be codified as Section
1559 91-9-529, Mississippi Code of 1972:

1560 91-9-529. **Distributions relative to support, mandatory and**
1561 **certain remainder interests.** (1) Relative to a support interest,
1562 whether or not a trust contains a spendthrift provision:

1563 (a) Although a beneficiary of a support interest has
1564 enforceable rights under Section 91-8-814, those rights do not
1565 raise the beneficiary's support interest to the level of a
1566 property interest;

1567 (b) No creditor or assignee shall reach that support
1568 interest until a distribution from the support interest is
1569 actually made to the beneficiary;

1570 (c) After all or a portion of a support interest is
1571 distributed to the beneficiary, no portion of the distribution



1572 made from the support interest shall be reached by a creditor or
1573 assignee of the beneficiary except to the extent that the
1574 distribution made from the support interest exceeds the amount
1575 necessary for the health, education, maintenance and support of
1576 the beneficiary who received the distribution made from the
1577 support interest;

1578 (d) In the case of a beneficiary who holds a support
1579 interest, the use or enjoyment of property belonging to the trust
1580 by that beneficiary shall not be transferred and shall not be
1581 reached by creditors or assignees of that beneficiary;

1582 (e) Regardless of whether a beneficiary has any
1583 outstanding creditors or assignees, a trustee or other fiduciary
1584 of a support interest may directly pay any expense on behalf of
1585 such beneficiary and may exhaust the income and principal of the
1586 trust for the benefit of such beneficiary; and

1587 (f) No trustee or other fiduciary is liable to any
1588 creditor or assignee for paying the expenses of a beneficiary of a
1589 support interest.

1590 (2) Relative to a mandatory interest, whether or not a trust
1591 contains a spendthrift provision:

1592 (a) While a court may order a trustee or other
1593 fiduciary to distribute a past-due mandatory distribution to its
1594 beneficiary, no court shall order a trustee or other fiduciary to
1595 distribute such past-due mandatory distribution directly to a
1596 creditor or assignee;



1597 (b) Regardless of whether a beneficiary has any
1598 outstanding creditors or assignees, a trustee or other fiduciary
1599 of a mandatory interest may directly pay any expense on behalf of
1600 such beneficiary and may exhaust the income and principal of the
1601 trust for the benefit of such beneficiary;

1602 (c) No trustee or other fiduciary is liable to any
1603 creditor or assignee for paying the expenses of a beneficiary of a
1604 mandatory interest.

1605 (3) Although a remainder interest may be an enforceable
1606 right, where it is not absolutely certain based on the language of
1607 the trust that the remainder interest will be distributed within
1608 one (1) year, it shall not be classified as a property interest.
1609 This subsection (3) does not affect eligibility for any public
1610 assistance program administered by the Department of Human
1611 Services.

1612 **SECTION 23.** The following shall be codified as Section
1613 91-9-531, Mississippi Code of 1972:

1614 91-9-531. **Personal obligations of trustee.** Trust property
1615 is not subject to personal obligations of the trustee, even if the
1616 trustee becomes insolvent or bankrupt.

1617 **SECTION 24.** The following shall be codified as Section
1618 91-9-533, Mississippi Code of 1972:

1619 91-9-533. **Removal or replacement power over trustee or other**
1620 **fiduciary not reachable by holder's creditors; interests of**
1621 **beneficiary who is also a trustee or other fiduciary not**



1622 **reachable.** (1) No creditor or assignee of a beneficiary shall
1623 have the power to reach an interest of a beneficiary or any other
1624 person who holds an unconditional or conditional removal or
1625 replacement power over a trustee or other fiduciary. Such power
1626 over a trustee or other fiduciary is personal to the holder and
1627 shall not be exercised by the holder's creditors. No court shall
1628 direct a holder to exercise the power.

1629 (2) Subject to Section 91-8-504(2)(c):

1630 (a) No creditor or assignee of a beneficiary may reach
1631 an interest of a beneficiary who is also a trustee, cotrustee or
1632 other fiduciary, or otherwise compel a distribution because the
1633 beneficiary is then serving as a trustee, cotrustee or other
1634 fiduciary; and

1635 (b) No court may foreclose against a beneficiary's
1636 interest described in subsection (1).

1637 **SECTION 25.** The following shall be codified as Section
1638 91-9-535, Mississippi Code of 1972:

1639 91-9-535. **Judicial foreclosure of beneficial interests,**
1640 **powers of appointment, and reserved powers prohibited; certain**
1641 **reaches prohibited.** Regardless of whether or not a trust contains
1642 a spendthrift provision:

1643 (a) No beneficial interest, power of appointment, or
1644 reserved power in a trust shall be judicially foreclosed;

1645 (b) No creditor or assignee shall reach a power of
1646 appointment or a remainder interest at the trust level and such



1647 creditor or assignee shall wait until any funds are distributed
1648 relative to such power of appointment or remainder interest before
1649 such creditor or assignee may reach such funds; and

1650 (c) No power of appointment is a property interest.

1651 **SECTION 26.** The following shall be codified as Section
1652 91-8-501, Mississippi Code of 1972:

1653 91-8-501. **Rights of beneficiary's creditor or assignee.** To
1654 the extent a beneficiary's interest is not subject to a
1655 spendthrift provision, the court may authorize a creditor or
1656 assignee of the beneficiary to reach the beneficiary's interest by
1657 attachment of present or future distributions to or for the
1658 benefit of the beneficiary or other means. The court may limit
1659 the award to such relief as is appropriate under the
1660 circumstances.

1661 **SECTION 27.** The following shall be codified as Section
1662 91-8-502, Mississippi Code of 1972:

1663 91-8-502. **Spendthrift provision.** (a) A spendthrift
1664 provision is valid only if it restrains both voluntary and
1665 involuntary transfer of a beneficiary's interest.

1666 (b) A term of a trust providing that the interest of a
1667 beneficiary is held subject to a "spendthrift trust," or words of
1668 similar import, is sufficient to restrain both voluntary and
1669 involuntary transfer of the beneficiary's interest.

1670 (c) A beneficiary may not transfer an interest in a trust in
1671 violation of a valid spendthrift provision and, except as



1672 otherwise provided in this article, a creditor or assignee of the
1673 beneficiary may not reach the interest or a distribution by the
1674 trustee before its receipt by the beneficiary.

1675 **SECTION 28.** The following shall be codified as Section
1676 91-8-503, Mississippi Code of 1972:

1677 91-8-503. **Exceptions to spendthrift provision.** (a) In this
1678 section, "child" includes any person for whom an order or judgment
1679 for child support has been entered in this or another state.

1680 (b) A spendthrift provision is unenforceable against:

1681 (1) A beneficiary's child, spouse, or former spouse who
1682 has a judgment or court order against the beneficiary for support
1683 or maintenance;

1684 (2) A judgment creditor who has provided services for
1685 the protection of a beneficiary's interest in the trust; and

1686 (3) A claim of this state or the United States to the
1687 extent a statute of this state or federal law so provides.

1688 (c) A claimant against which a spendthrift provision cannot
1689 be enforced may obtain from a court an order attaching present or
1690 future distributions to or for the benefit of the beneficiary.
1691 The court may limit the award to such relief as is appropriate
1692 under the circumstances.

1693 **SECTION 29.** The following shall be codified as Section
1694 91-8-504, Mississippi Code of 1972:

1695 91-8-504. **Discretionary trusts; effect of standard.** (a) In
1696 this section, "child" includes any person for whom an order or



1697 judgment for child support has been entered in this or another
1698 state.

1699 (b) Except as otherwise provided in subsection (c), whether
1700 or not a trust contains a spendthrift provision, a creditor of a
1701 beneficiary may not compel a distribution that is subject to the
1702 trustee's discretion, even if:

1703 (1) The discretion is expressed in the form of a
1704 standard of distribution; or

1705 (2) The trustee has abused the discretion.

1706 (c) To the extent a trustee has not complied with a standard
1707 of distribution or has abused a discretion:

1708 (1) A distribution may be ordered by the court to
1709 satisfy a judgment or court order against the beneficiary for
1710 support or maintenance of the beneficiary's child, spouse, or
1711 former spouse; and

1712 (2) The court shall direct the trustee to pay to the
1713 child, spouse, or former spouse such amount as is equitable under
1714 the circumstances but not more than the amount the trustee would
1715 have been required to distribute to or for the benefit of the
1716 beneficiary had the trustee complied with the standard or not
1717 abused the discretion.

1718 (d) This section does not limit the right of a beneficiary
1719 to maintain a judicial proceeding against a trustee for an abuse
1720 of discretion or failure to comply with a standard for
1721 distribution.



1722 (e) If the trustee's or cotrustee's discretion to make
1723 distributions for the trustee's or cotrustee's own benefit is
1724 limited by an ascertainable standard, a creditor may not reach or
1725 compel distribution of the beneficial interest except to the
1726 extent the interest would be subject to the creditor's claim were
1727 the beneficiary not acting as trustee or cotrustee.

1728 **SECTION 30.** The following shall be codified as Section
1729 91-8-505, Mississippi Code of 1972:

1730 91-8-505. **Creditors' claim against settlor.** (a) Whether or
1731 not the terms of a trust contain a spendthrift provision, the
1732 following rules apply:

1733 (1) During the lifetime of the settlor, the property of
1734 a revocable trust is subject to claims of the settlor's creditors.

1735 (2) With respect to an irrevocable trust, a creditor or
1736 assignee of the settlor may reach the maximum amount that can be
1737 distributed to or for the settlor's benefit. If a trust has more
1738 than one (1) settlor, the amount the creditor or assignee of a
1739 particular settlor may reach may not exceed the settlor's interest
1740 in the portion of the trust attributable to that settlor's
1741 contribution.

1742 (3) After the death of a settlor, and subject to the
1743 settlor's right to direct the source from which liabilities will
1744 be paid, the property of a trust that was revocable at the
1745 settlor's death is subject to claims of the settlor's creditors,
1746 costs of administration of the settlor's estate, the expenses of



1747 the settlor's funeral and disposal of remains, and statutory
1748 allowances to a surviving spouse and children to the extent the
1749 settlor's probate estate is inadequate to satisfy those claims,
1750 costs, expenses, and allowances.

1751 (b) For purposes of this section:

1752 (1) During the period the power may be exercised, the
1753 holder of a power of withdrawal is treated in the same manner as
1754 the settlor of a revocable trust to the extent of the property
1755 subject to the power; and

1756 (2) Upon the lapse, release, or waiver of the power,
1757 the holder is treated as the settlor of the trust only to the
1758 extent the value of the property affected by the lapse, release,
1759 or waiver exceeds the greater of the amount specified in Section
1760 2041(b) (2) or 2514(e) of the Internal Revenue Code of 1986, or
1761 Section 2503(b) of the Internal Revenue Code of 1986, in each case
1762 as in effect on July 1, 2019.

1763 **SECTION 31.** The following shall be codified as Section
1764 91-8-506, Mississippi Code of 1972:

1765 91-8-506. **Overdue distribution.** (a) In this section,
1766 "mandatory distribution" means a distribution of income or
1767 principal which the trustee is required to make to a beneficiary
1768 under the terms of the trust, including a distribution upon
1769 termination of the trust. The term does not include a
1770 distribution subject to the exercise of the trustee's discretion
1771 even if (1) the discretion is expressed in the form of a standard



1772 of distribution, or (2) the terms of the trust authorizing a
1773 distribution couple language of discretion with language of
1774 direction.

1775 (b) Whether or not a trust contains a spendthrift provision,
1776 a creditor or assignee of a beneficiary may reach a mandatory
1777 distribution of income or principal, including a distribution upon
1778 termination of the trust, if the trustee has not made the
1779 distribution to the beneficiary within a reasonable time after the
1780 designated distribution date.

1781 **SECTION 32.** The following shall be codified as Section
1782 91-8-507, Mississippi Code of 1972:

1783 91-8-507. **Personal obligations of trustee.** Trust property
1784 is not subject to personal obligations of the trustee, even if the
1785 trustee becomes insolvent or bankrupt.

1786 **SECTION 33.** This section is the Mississippi Uniform
1787 Disclaimer of Property Interests Act (2002/2010) and shall be
1788 codified in a Chapter in Title 89 of the Mississippi Code of 1972:

1789 **Section 1. Short title.** This chapter may be cited as the
1790 "Mississippi Uniform Disclaimer of Property Interests Act
1791 (2002/2010)."

1792 **Section 2. Definitions.** In this chapter:

1793 (1) "Disclaimant" means the person to whom a disclaimed
1794 interest or power would have passed had the disclaimer not been
1795 made.



1796 (2) "Disclaimed interest" means the interest that would
1797 have passed to the disclaimant had the disclaimer not been made.

1798 (3) "Disclaimer" means the refusal to accept an
1799 interest in or power over property.

1800 (4) "Fiduciary" means a personal representative,
1801 trustee, agent acting under a power of attorney, or other person
1802 authorized to act as a fiduciary with respect to the property of
1803 another person.

1804 (5) "Jointly held property" means property held in the
1805 name of two (2) or more persons under an arrangement in which all
1806 holders have concurrent interests and under which the
1807 last-surviving holder is entitled to the whole of the property.
1808 Jointly held property does not include property held as tenants by
1809 the entirety.

1810 (6) "Person" means an individual, corporation, business
1811 trust, estate, trust, partnership, limited liability company,
1812 association, joint venture, government; governmental subdivision,
1813 agency, or instrumentality; public corporation, or any other legal
1814 or commercial entity.

1815 (7) "State" means a state of the United States, the
1816 District of Columbia, Puerto Rico, the United States Virgin
1817 Islands, or any territory or insular possession subject to the
1818 jurisdiction of the United States. The term includes an Indian
1819 tribe or band, or Alaskan native village, recognized by federal
1820 law or formally acknowledged by a state.



1821 (8) "Trust" means:

1822 (A) An express trust, charitable or noncharitable,
1823 with additions thereto, whenever and however created; and

1824 (B) A trust created pursuant to a statute,
1825 judgment, or decree which requires the trust to be administered in
1826 the manner of an express trust.

1827 **Section 3. Scope.** This chapter applies to disclaimers of
1828 any interest in or power over property, whenever created.

1829 **Section 4. Chapter supplemented by other law.** (a) Unless
1830 displaced by a provision of this chapter, the principles of law
1831 and equity supplement this chapter.

1832 (b) This chapter does not limit any right of a person to
1833 waive, release, disclaim, or renounce an interest in or power over
1834 property under a law other than this chapter.

1835 **Section 5. Power to disclaim; general requirements; when**
1836 **irrevocable.** (a) A person may disclaim, in whole or part, any
1837 interest in or power over property, including a power of
1838 appointment. A person may disclaim the interest or power even if
1839 its creator imposed a spendthrift provision or similar restriction
1840 on transfer or a restriction or limitation on the right to
1841 disclaim.

1842 (b) Except to the extent a fiduciary's right to disclaim is
1843 expressly restricted or limited by another statute of this state
1844 or by the instrument creating the fiduciary relationship, a
1845 fiduciary may disclaim, in whole or part, any interest in or power



1846 over property, including a power of appointment, whether acting in
1847 a personal or representative capacity. A fiduciary may disclaim
1848 the interest or power even if its creator imposed a spendthrift
1849 provision or similar restriction on transfer or a restriction or
1850 limitation on the right to disclaim, or an instrument other than
1851 the instrument that created the fiduciary relationship imposed a
1852 restriction or limitation on the right to disclaim.

1853 (c) To the extent there is no material conflict of interest,
1854 a parent, as defined in Section 93-15-103(h), can disclaim on
1855 behalf of his or her minor or incapacitated child, if a
1856 conservator or guardian has not been appointed for such child.

1857 (d) To be effective, a disclaimer must be in a writing or
1858 other record, declare the disclaimer, describe the interest or
1859 power disclaimed, be signed by the person making the disclaimer,
1860 and be delivered or filed in the manner provided in Section 12. In
1861 this subsection "record" means information that is inscribed on a
1862 tangible medium or that is stored in an electronic or other medium
1863 and is retrievable in perceivable form.

1864 (e) A partial disclaimer may be expressed as a fraction,
1865 percentage, monetary amount, term of years, limitation of a power,
1866 or any other interest or estate in the property.

1867 (f) A disclaimer becomes irrevocable when it is delivered or
1868 filed pursuant to Section 12 or when it becomes effective as
1869 provided in Sections 6 through 11, whichever occurs later.



1870 (g) A disclaimer made under this chapter is not a transfer,
1871 assignment, or release.

1872 (h) No person obligated to distribute an interest disclaimed
1873 under this chapter shall be liable to any person for distributing
1874 the interest as if the interest were not disclaimed unless the
1875 person obligated to distribute the interest receives a copy of the
1876 disclaimer prior to distributing the interest.

1877 **Section 6. Disclaimer of interest in property.** (a) In this
1878 section:

1879 (1) "Future interest" means an interest that takes
1880 effect in possession or enjoyment, if at all, later than the time
1881 of its creation.

1882 (2) "Time of distribution" means the time when a
1883 disclaimed interest would have taken effect in possession or
1884 enjoyment.

1885 (b) Except for a disclaimer governed by Section 7A, 7B, or
1886 8, the following rules apply to a disclaimer of an interest in
1887 property:

1888 (1) The disclaimer takes effect as of the time the
1889 instrument creating the interest becomes irrevocable, or, if the
1890 interest arose under the law of intestate succession, as of the
1891 time of the intestate's death.

1892 (2) The disclaimed interest passes according to any
1893 provision in the instrument creating the interest providing for



1894 the disposition of the interest, should it be disclaimed, or of
1895 disclaimed interests in general.

1896 (3) If the instrument does not contain a provision
1897 described in paragraph (2), the following rules apply:

1898 (A) If the disclaimant is not an individual, the
1899 disclaimed interest passes as if the disclaimant did not exist.

1900 (B) If the disclaimant is an individual, except as
1901 otherwise provided in subparagraphs (C) and (D), the disclaimed
1902 interest passes as if the disclaimant had died immediately before
1903 the time of distribution.

1904 (C) If by law or under the instrument, the
1905 descendants of the disclaimant would share in the disclaimed
1906 interest by any method of representation had the disclaimant died
1907 before the time of distribution, the disclaimed interest passes
1908 only to the descendants of the disclaimant who survive the time of
1909 distribution.

1910 (D) If the disclaimed interest would pass to the
1911 disclaimant's estate had the disclaimant died before the time of
1912 distribution, the disclaimed interest instead passes by
1913 representation to the descendants of the disclaimant who survive
1914 the time of distribution. If no descendant of the disclaimant
1915 survives the time of distribution, the disclaimed interest passes
1916 to those persons, including the state but excluding the
1917 disclaimant, and in such shares as would succeed to the
1918 transferor's intestate estate under the intestate succession law



1919 of the transferor's domicile had the transferor died at the time
1920 of distribution. However, if the transferor's surviving spouse is
1921 living but is remarried at the time of distribution, the
1922 transferor is deemed to have died unmarried at the time of
1923 distribution.

1924 (4) Upon the disclaimer of a preceding interest, a
1925 future interest held by a person other than the disclaimant takes
1926 effect as if the disclaimant had died or ceased to exist
1927 immediately before the time of distribution, but a future interest
1928 held by the disclaimant is not accelerated in possession or
1929 enjoyment.

1930 **Section 7A. Disclaimer of rights of survivorship in jointly**
1931 **held property.** (a) Upon the death of a holder of jointly held
1932 property, a surviving holder may disclaim, in whole or in part,
1933 the incremental portion of the jointly held property devolving to
1934 the surviving holder by right of survivorship.

1935 (b) A disclaimer pursuant to subsection (a) of this section
1936 takes effect as of the death of the holder of jointly held
1937 property to whose death the disclaimer relates.

1938 (c) In the event of a disclaimer pursuant to subsection (a)
1939 of this section with only one (1) holder surviving the death of
1940 the holder to whose death the disclaimer relates, the incremental
1941 portion disclaimed shall, as a consequence of the disclaimer, pass
1942 as part of the estate of the deceased holder.



1943 (d) In the event of a disclaimer pursuant to subsection (a)
1944 of this section with two (2) or more of the holders surviving the
1945 death of the holder to whose death the disclaimer relates:

1946 (1) The disclaimer does not sever the joint tenancy
1947 with respect to the jointly held property as among the surviving
1948 holders;

1949 (2) The incremental portion disclaimed shall, as a
1950 consequence of a disclaimer, devolve to the surviving holders in
1951 proportion to their respective interests in the jointly held
1952 property excluding the disclaimant and any other surviving holder
1953 who disclaims to the extent of his, her or its disclaimer of the
1954 incremental portion;

1955 (3) An incremental portion devolving to a surviving
1956 holder, as a consequence of one or more disclaimers, may be
1957 disclaimed by the surviving holder;

1958 (4) To the extent that all of the surviving holders
1959 disclaim an incremental portion devolving to them, the portion
1960 shall instead pass as part of the estate of the deceased holder;
1961 and

1962 (5) The proportion of each of the surviving holders
1963 with respect to the jointly held property shall be adjusted to
1964 take into account the devolution of the incremental portion to the
1965 extent that the portion is disclaimed.

1966 **Section 7B. Disclaimer of property held as tenants by the**
1967 **entirety.** (a) The survivorship interest in property held as a



1968 tenancy by the entirety to which the survivor succeeds by
1969 operation of law upon the death of the cotenant may be disclaimed
1970 as provided in this chapter. For purposes of this chapter only,
1971 the deceased tenant's interest in property held as a tenancy by
1972 the entirety shall be deemed to be an undivided one-half (1/2)
1973 interest.

1974 (b) A disclaimer under subsection (a) takes effect as of the
1975 death of the deceased tenant to whose death the disclaimer
1976 relates.

1977 (c) The survivorship interest in property held as a tenancy
1978 by the entirety disclaimed by the surviving tenant passes as if
1979 the disclaimant had predeceased the tenant to whose death the
1980 disclaimer relates.

1981 **Section 8. Disclaimer of interest by trustee.** (a) If a
1982 trustee disclaims an interest in property that otherwise would
1983 have become trust property:

1984 (1) The interest does not become trust property;

1985 (2) The disclaimer:

1986 (A) Takes effect as of the time the trust became
1987 irrevocable; and

1988 (B) Relates back for all purposes to the time the
1989 trust became irrevocable; and

1990 (3) The disclaimed interest is not subject to the
1991 claims of any creditor of the trustee, the trust, or any trust
1992 beneficiary.



1993 (b) If the instrument creating the disclaimed interest
1994 contains a provision that provides for the disposition of the
1995 interest if the interest were to be disclaimed, the disclaimed
1996 interest passes according to that provision.

1997 (c) If the instrument creating the disclaimed interest does
1998 not contain a provision described by subsection (b), the
1999 disclaimed interest passes as if:

2000 (1) All of the current beneficiaries, presumptive
2001 remainder beneficiaries, and contingent beneficiaries of the trust
2002 affected by the disclaimer who are individuals who died before the
2003 trust became irrevocable; and

2004 (2) All beneficiaries of the trust affected by the
2005 disclaimer who are not individuals ceased to exist without
2006 successor organizations and without substitution of beneficiaries
2007 under the cy pres doctrine before the trust became irrevocable.

2008 (d) Subsection (c) applies only for purposes of determining
2009 the disposition of an interest in property disclaimed by a trustee
2010 that otherwise would have become trust property and applies only
2011 with respect to the trust affected by the disclaimer. Subsection
2012 (c) does not apply with respect to other trusts governed by the
2013 instrument and does not apply for other purposes under the
2014 instrument or under the laws of intestacy.

2015 **Section 9. Disclaimer of power of appointment or other power**
2016 **not held in fiduciary capacity.** If a holder disclaims a power of



2017 appointment or other power not held in a fiduciary capacity, the
2018 following rules apply:

2019 (1) If the holder has not exercised the power, the
2020 disclaimer takes effect as of the time the instrument creating the
2021 power becomes irrevocable.

2022 (2) If the holder has exercised the power and the
2023 disclaimer is of a power other than a presently exercisable
2024 general power of appointment, the disclaimer takes effect
2025 immediately after the last exercise of the power.

2026 (3) The instrument creating the power is construed as
2027 if the power expired when the disclaimer became effective.

2028 **Section 10. Disclaimer by appointee, object, or taker in**
2029 **default of exercise of power of appointment.** (a) A disclaimer of
2030 an interest in property by an appointee of a power of appointment
2031 takes effect as of the time the instrument by which the holder
2032 exercises the power becomes irrevocable.

2033 (b) A disclaimer of an interest in property by an object or
2034 taker in default of an exercise of a power of appointment takes
2035 effect as of the time the instrument creating the power becomes
2036 irrevocable.

2037 **Section 11. Disclaimer of power held in fiduciary capacity.**

2038 (a) If a fiduciary disclaims a power held in a fiduciary capacity
2039 which has not been exercised, the disclaimer takes effect as of
2040 the time the instrument creating the power becomes irrevocable.



2041 (b) If a fiduciary disclaims a power held in a fiduciary
2042 capacity which has been exercised, the disclaimer takes effect
2043 immediately after the last exercise of the power.

2044 (c) A disclaimer under this section is effective as to
2045 another fiduciary if the disclaimer so provides and the fiduciary
2046 disclaiming has the authority to bind the estate, trust, or other
2047 person for whom the fiduciary is acting.

2048 **Section 12. Delivery or filing.** (a) In this section,
2049 "beneficiary designation" means an instrument, other than an
2050 instrument creating a trust, naming the beneficiary of:

- 2051 (1) An annuity or insurance policy;
2052 (2) An account with a designation for payment on death;
2053 (3) A security registered in beneficiary form;
2054 (4) A pension, profit-sharing, retirement, or other
2055 employment-related benefit plan; or
2056 (5) Any other nonprobate transfer at death.

2057 (b) Subject to subsections (c) through (1), delivery of a
2058 disclaimer may be effected by personal delivery, first-class mail,
2059 or any other method likely to result in its receipt.

2060 (c) In the case of an interest created under the law of
2061 intestate succession or an interest created by will, other than an
2062 interest in a testamentary trust:

- 2063 (1) A disclaimer must be delivered to the personal
2064 representative of the decedent's estate; or



2065 (2) If no personal representative is then serving, it
2066 must be filed with a court having jurisdiction to appoint the
2067 personal representative.

2068 (d) In the case of an interest in a testamentary trust:

2069 (1) A disclaimer must be delivered to the trustee then
2070 serving, or if no trustee is then serving, to the personal
2071 representative of the decedent's estate; or

2072 (2) If no personal representative is then serving, it
2073 must be filed with a court having jurisdiction to enforce the
2074 trust.

2075 (e) In the case of an interest in an inter vivos trust:

2076 (1) A disclaimer must be delivered to the trustee then
2077 serving;

2078 (2) If no trustee is then serving, it must be filed
2079 with a court having jurisdiction to enforce the trust; or

2080 (3) If the disclaimer is made before the time the
2081 instrument creating the trust becomes irrevocable, it must be
2082 delivered to the settlor of a revocable trust or the transferor of
2083 the interest.

2084 (f) In the case of an interest created by a beneficiary
2085 designation which is disclaimed before the designation becomes
2086 irrevocable, the disclaimer must be delivered to the person making
2087 the beneficiary designation or to such person's legal
2088 representative.



2089 (g) In the case of an interest created by a beneficiary
2090 designation which is disclaimed after the designation becomes
2091 irrevocable, the disclaimer must be delivered to the person
2092 obligated to distribute the interest.

2093 (h) In the case of a disclaimer by a surviving holder of
2094 jointly held property or property held as tenants by the entirety,
2095 the disclaimer must be delivered to the person to whom the
2096 disclaimed interest passes.

2097 (i) In the case of a disclaimer by an object or taker in
2098 default of exercise of a power of appointment at any time after
2099 the power was created:

2100 (1) the disclaimer must be delivered to the holder of
2101 the power or to the fiduciary acting under the instrument that
2102 created the power; or

2103 (2) if no fiduciary is then serving, it must be filed
2104 with a court having authority to appoint the fiduciary.

2105 (j) In the case of a disclaimer by an appointee of a
2106 nonfiduciary power of appointment:

2107 (1) The disclaimer must be delivered to the holder, the
2108 personal representative of the holder's estate or to the fiduciary
2109 under the instrument that created the power; or

2110 (2) If no fiduciary is then serving, it must be filed
2111 with a court having authority to appoint the fiduciary.

2112 (k) In the case of a disclaimer by a fiduciary of a power
2113 over a trust or estate, the disclaimer must be delivered as



2114 provided in subsection (c), (d), or (e), as if the power
2115 disclaimed were an interest in property.

2116 (1) In the case of a disclaimer of a power by an agent, the
2117 disclaimer must be delivered to the principal or the principal's
2118 representative.

2119 **Section 13. When disclaimer barred or limited.** (a) A
2120 disclaimer is barred by a written waiver of the right to disclaim.

2121 (b) A disclaimer of an interest in property is barred if any
2122 of the following events occur before the disclaimer becomes
2123 effective:

2124 (1) The disclaimant accepts the interest sought to be
2125 disclaimed;

2126 (2) The disclaimant voluntarily assigns, conveys,
2127 encumbers, pledges, or transfers the interest sought to be
2128 disclaimed or contracts to do so; or

2129 (3) A judicial sale of the interest sought to be
2130 disclaimed occurs.

2131 (c) A disclaimer, in whole or part, of the future exercise
2132 of a power held in a fiduciary capacity is not barred by its
2133 previous exercise.

2134 (d) A disclaimer, in whole or part, of the future exercise
2135 of a power not held in a fiduciary capacity is not barred by its
2136 previous exercise unless the power is exercisable in favor of the
2137 disclaimant.



2138 (e) A disclaimer is barred or limited if so provided by law
2139 other than this chapter.

2140 (f) A disclaimer of a power over property which is barred by
2141 this section is ineffective. A disclaimer of an interest in
2142 property which is barred by this section takes effect as a
2143 transfer of the interest disclaimed to the persons who would have
2144 taken the interest under this chapter had the disclaimer not been
2145 barred.

2146 **Section 14. Tax-qualified disclaimer.** (a) Notwithstanding
2147 any other provision of this chapter, if as a result of a
2148 disclaimer or transfer, the disclaimed or transferred interest is
2149 treated pursuant to the provisions of Title 26 of the United
2150 States Code, as now or hereafter amended, or any successor statute
2151 thereto, and the regulations promulgated thereunder, as never
2152 having been transferred to the disclaimant, then the disclaimer or
2153 transfer is effective as a disclaimer under this chapter.

2154 (b) In order for a disclaimer made under the provisions of
2155 this chapter to be effective as a tax-qualified disclaimer
2156 pursuant to the provisions of Title 26 of the United States Code,
2157 the disclaimer must satisfy the conditions of Title 26, Section
2158 2518 of the United States Code, as now or hereafter amended,
2159 including the requirement that the disclaimer be made generally
2160 within nine (9) months from the day the interest being disclaimed
2161 was created.



2162 **Section 15. Recording of disclaimer.** (a) A disclaimer of
2163 an interest in or relating to real property does not provide
2164 constructive notice to all persons unless the disclaimer contains
2165 a legal description of the real property to which the disclaimer
2166 relates and unless the disclaimer is filed for recording in the
2167 office of the chancery clerk of the county or counties where the
2168 real property is located.

2169 (b) An effective disclaimer meeting the requirements of
2170 subsection (a) constitutes constructive notice to all persons from
2171 and after the time of filing.

2172 (c) Failure to file, record, or register the disclaimer does
2173 not affect its validity as between the disclaimant and persons to
2174 whom the property interest or power passes by reason of the
2175 disclaimer.

2176 **Section 16. Application to existing relationships.** Except
2177 as otherwise provided in Section 13, an interest in or power over
2178 property existing on the effective date of this chapter as to
2179 which the time for delivering or filing a disclaimer under law
2180 superseded by this chapter has not expired may be disclaimed after
2181 the effective date of this chapter.

2182 **Section 17. Uniformity of application and construction.** In
2183 applying and construing this uniform act, consideration must be
2184 given to the need to promote uniformity of the law with respect to
2185 its subject matter among states that enact it.



2186 **Section 18. Severability clause.** If any provision of this
2187 chapter or its application to any person or circumstance is held
2188 invalid, the invalidity does not affect other provisions or
2189 applications of this chapter which can be given effect without the
2190 invalid provision or application, and to this end the provisions
2191 of this chapter are severable.

2192 **SECTION 34.** Section 91-8-105, Mississippi Code of 1972, is
2193 amended as follows:

2194 91-8-105. (a) Except as otherwise provided in the terms of
2195 the trust, this chapter governs the duties and powers of a trustee
2196 or any other fiduciary under this chapter, relations among
2197 trustees and such other fiduciaries, and the rights and interests
2198 of a beneficiary. The terms of a trust may expand, restrict,
2199 eliminate, or otherwise vary the duties and powers of a trustee,
2200 any such other fiduciary, relations among any of them, and the
2201 rights and interests of a beneficiary; however, nothing contained
2202 in this subsection shall be construed to override or nullify the
2203 provisions of subsection (b). The rule of statutory construction
2204 that statutes in derogation of the common law are to be strictly
2205 construed shall have no application to this section. Except as
2206 restricted by subsection (b), pursuant to this section, courts
2207 shall give maximum effect to the principal of freedom of
2208 disposition and to the enforceability of trust instruments.

2209 (b) The terms of a trust prevail over any provision of this
2210 chapter except:



- 2211 (1) The requirements for creating a trust;
- 2212 (2) The duty of a trustee to act in good faith in
2213 accordance with the terms and purposes of the trust and the
2214 interests of the beneficiaries;
- 2215 (3) The requirement that a trust and its terms be for
2216 the benefit of its beneficiaries as the interests of such
2217 beneficiaries are defined under the terms of the trust, and that
2218 the trust have a purpose that is lawful and possible to achieve;
- 2219 (4) The power of the court to modify or terminate a
2220 trust under Sections 91-8-410 through 91-8-416;
- 2221 (5) The effect of a spendthrift provision and the
2222 rights of certain creditors and assignees to reach a trust as
2223 provided in * * * Articles 11 and 5 of the Uniform Trust Code
2224 codified as Sections 91-9-521 through 91-9-535, Mississippi Code
2225 of 1972, and Sections 91-8-501 through 91-8 507, Mississippi Code
2226 of 1972;
- 2227 (6) The power of the court under Section 91-8-702 to
2228 require, dispense with, or modify or terminate a bond;
- 2229 (7) The power of the court under Section 91-8-708(b) to
2230 adjust a trustee's compensation specified in the terms of the
2231 trust which is unreasonably low or high;
- 2232 (8) Subject to subsection (d), the duty under Section
2233 91-8-813(b) to notify beneficiaries of an irrevocable trust
2234 (including anyone who holds a power of appointment) who have



2235 attained twenty-five (25) years of age that the trust has been
2236 established as set forth in that Section 91-8-813(b);

2237 (9) Subject to subsection (d), the duty under Section
2238 91-8-813(a) (1) and (2) to keep the beneficiaries (including anyone
2239 who holds a power of appointment) informed and to respond to the
2240 request of a beneficiary of an irrevocable trust for trustee's
2241 reports and other information reasonably related to the
2242 administration of the trust;

2243 (10) The effect of an exculpatory term under Section
2244 91-8-1008;

2245 (11) The rights under Sections 91-8-1010 through
2246 91-8-1013 of a person other than a trustee or beneficiary;

2247 (12) Periods of limitation for commencing a judicial
2248 proceeding;

2249 (13) The power of the court to take such action and
2250 exercise such jurisdiction as may be necessary in the interests of
2251 justice; and

2252 (14) The subject-matter jurisdiction of the court and
2253 venue for commencing a proceeding as provided in Sections 91-8-203
2254 and 91-8-204.

2255 (c) Any purpose enunciated as a material purpose of a trust
2256 in that trust's trust instrument shall be treated as a material
2257 purpose of that trust for all purposes of this chapter.

2258 (d) Notwithstanding subsection (b) (8) and (9) of this
2259 section, the duties of a trustee to give notice, information and



2260 reports under Section 91-8-813(a) and (b) may be waived or
2261 modified in the trust instrument or by the settlor of the trust,
2262 or a trust protector or trust advisor that holds the power to so
2263 direct, directs otherwise in a writing delivered to the trustee in
2264 any of the following ways:

2265 (1) By waiving or modifying such duties as to all
2266 qualified beneficiaries during the lifetime of the settlor or the
2267 settlor's spouse;

2268 (2) By specifying a different age at which a
2269 beneficiary or class of beneficiaries must be notified under
2270 Section 91-8-813(b); or

2271 (3) With respect to one or more of the beneficiaries,
2272 by designating a beneficiary surrogate to receive such notice,
2273 information and reports who will act in good faith to protect the
2274 interests of the beneficiary or beneficiaries.

2275 **SECTION 35.** Sections 27-10-1, 27-10-3, 27-10-5, 27-10-7,
2276 27-10-9, 27-10-11, 27-10-13, 27-10-15, 27-10-17, 27-10-19,
2277 27-10-21, 27-10-23 and 27-10-25, Mississippi Code of 1972, which
2278 constitute the Uniform Estate Tax Apportionment Act, are repealed.

2279 **SECTION 36.** Sections 89-21-1, 89-21-3, 89-21-5, 89-21-7,
2280 89-21-9, 89-21-11, 89-21-13, 89-21-15 and 89-21-17, Mississippi
2281 Code of 1972, which constitute the Uniform Disclaimer of Property
2282 Interests Act, are repealed.



2283 **SECTION 37.** Sections 91-9-501, 91-9-503, 91-9-505, 91-9-507,
2284 91-9-509 and 91-9-511, Mississippi Code of 1972, which constitute
2285 the Family Trust Preservation Act of 1998, are repealed.

2286 **SECTION 38.** Section 91-7-259, Mississippi Code of 1972,
2287 which provides for foreign fiduciaries and lawsuits and debts, is
2288 repealed.

2289 **SECTION 39.** Sections 27-10-51 through 27-10-77, Mississippi
2290 Code of 1972, constitute the Estate Apportionment Act.

2291 **SECTION 40.** Sections 91-9-521 through 91-9-535, Mississippi
2292 Code of 1972, constitute Article 11 of the Uniform Trust Code.

2293 **SECTION 41.** Sections 91-8-501 through 91-8-507, Mississippi
2294 Code of 1972, constitute Article 5 of the Uniform Trust Code.

2295 **SECTION 42.** This act shall take effect and be in force from
2296 and after July 1, 2019.

