

By: Senator(s) Doty

To: Judiciary, Division A

SENATE BILL NO. 2851

1 AN ACT TO REVISE MISSISSIPPI LAW GOVERNING TRUSTS AND  
2 ESTATES; TO CREATE THE MISSISSIPPI REAL PROPERTY TRANSFER-ON-DEATH  
3 ACT; TO CREATE NEW SECTION 91-27-1, MISSISSIPPI CODE OF 1972, TO  
4 CREATE A SHORT TITLE; TO CREATE NEW SECTION 91-27-3, MISSISSIPPI  
5 CODE OF 1972, TO ENACT DEFINITIONS; TO CREATE NEW SECTIONS 91-27-5  
6 AND 91-27-7, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR  
7 APPLICABILITY AND NONEXCLUSIVITY; TO CREATE NEW SECTIONS 91-27-9,  
8 91-27-11 AND 91-27-13, MISSISSIPPI CODE OF 1972, TO AUTHORIZE A  
9 TRANSFER-ON-DEATH DEED THAT IS BOTH REVOCABLE AND NONTESTAMENTARY;  
10 TO CREATE NEW SECTION 91-27-15, MISSISSIPPI CODE OF 1972, TO  
11 REQUIRE CAPACITY ON THE PART OF THE TRANSFEROR; TO CREATE NEW  
12 SECTION 91-27-17, MISSISSIPPI CODE OF 1972, TO SET OTHER  
13 REQUIREMENTS; TO CREATE NEW SECTION 91-27-19, MISSISSIPPI CODE OF  
14 1972, TO ALLOW WAIVER OF NOTICE, DELIVERY, ACCEPTANCE AND  
15 CONSIDERATION; TO CREATE NEW SECTION 91-27-21, MISSISSIPPI CODE OF  
16 1972, TO SET LIMITS ON REVOCATION; TO CREATE NEW SECTION 91-27-23,  
17 MISSISSIPPI CODE OF 1972, TO PROVIDE FOR THE EFFECT OF A TRANSFER-  
18 ON-DEATH DEED DURING A TRANSFEROR'S LIFE; TO CREATE NEW SECTION  
19 91-27-25, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR THE EFFECT OF  
20 SUBSEQUENT CONVEYANCE; TO CREATE NEW SECTION 91-27-27, MISSISSIPPI  
21 CODE OF 1972, TO PROVIDE FOR THE EFFECT AT TRANSFEROR'S DEATH; TO  
22 CREATE NEW SECTION 91-27-29, MISSISSIPPI CODE OF 1972, TO PROVIDE  
23 FOR THE EFFECT OF LIENS, ENCUMBRANCES AND CREDITORS' CLAIMS; TO  
24 CREATE NEW SECTION 91-27-31, MISSISSIPPI CODE OF 1972, TO  
25 AUTHORIZE DISCLAIMER; TO CREATE NEW SECTION 91-27-33 AND 91-27-35,  
26 MISSISSIPPI CODE OF 1972, TO PROVIDE OPTIONAL FORMS; TO CREATE NEW  
27 SECTION 91-27-37, MISSISSIPPI CODE OF 1972, TO SPECIFY THE ACT'S  
28 RELATION TO ELECTRONIC SIGNATURES UNDER THE GLOBAL AND NATIONAL  
29 COMMERCE ACT; TO CREATE NEW SECTION 91-29-1, MISSISSIPPI CODE OF  
30 1972, TO PROVIDE FOR REVOCATION OF CERTAIN INSTRUMENTS EXECUTED  
31 BEFORE DIVORCE; TO CREATE NEW SECTION 91-29-3, MISSISSIPPI CODE OF  
32 1972, TO PROVIDE FOR TREATMENT OF A DECEDENT'S FORMER SPOUSE; TO  
33 CREATE NEW SECTION 91-29-5, MISSISSIPPI CODE OF 1972, TO ENACT  
34 DEFINITIONS; TO CREATE NEW SECTION 91-29-7, MISSISSIPPI CODE OF



35 1972, TO PROVIDE FOR REVOCATION OF CERTAIN NONTESTAMENTARY  
36 TRANSFERS AND INSTRUMENTS UNDER WHICH THE FORMER SPOUSE MAY HAVE  
37 BEEN A BENEFICIARY; TO CREATE NEW SECTION 91-29-9, MISSISSIPPI  
38 CODE OF 1972, TO PROVIDE FOR THE EFFECT OF REVOCATION; TO CREATE  
39 NEW SECTIONS 91-29-11 AND 91-29-13, MISSISSIPPI CODE OF 1972, TO  
40 PROVIDE FOR THE LIABILITY OF THE FORMER SPOUSE AND CERTAIN OTHERS;  
41 TO CREATE NEW SECTION 91-29-15, MISSISSIPPI CODE OF 1972, TO  
42 PROVIDE FOR CERTAIN TRUST WITH DIVORCED PARTIES AS JOINT SETTLORS;  
43 TO CREATE NEW SECTION 91-29-17, MISSISSIPPI CODE OF 1972, TO MAKE  
44 PROVISION FOR CERTAIN MULTIPLE-PARTY ACCOUNTS AND TO PROVIDE FOR  
45 TREATMENT OF A FORMER SPOUSE UNDER CERTAIN CIRCUMSTANCES; TO  
46 CREATE NEW SECTIONS 91-29-19 AND 91-29-21, MISSISSIPPI CODE OF  
47 1972, TO CREATE STANDARDS FOR DETERMINING AFFINITY AND  
48 CONSANGUINITY; TO CREATE NEW SECTION 91-29-23, MISSISSIPPI CODE OF  
49 1972, TO PROVIDE FOR THE PRE-DECREE DESIGNATION OF EX-SPOUSE AS  
50 LIFE INSURANCE BENEFICIARY; TO CREATE NEW SECTION 91-29-25,  
51 MISSISSIPPI CODE OF 1972, TO PROVIDE FOR THE PRE-DECREE  
52 DESIGNATION OF EX-SPOUSE AS RETIREMENT OR OTHER FINANCIAL PLAN  
53 BENEFICIARY; TO CREATE THE MISSISSIPPI UNIFORM ESTATE TAX  
54 APPORTIONMENT ACT; TO CREATE NEW SECTION 91-25-1, MISSISSIPPI CODE  
55 OF 1972, TO ENACT A SHORT TITLE; TO CREATE NEW SECTION 91-25-3,  
56 MISSISSIPPI CODE OF 1972, TO CREATE DEFINITIONS; TO CREATE NEW  
57 SECTION 91-25-5, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR  
58 APPORTIONMENT BY WILL; TO CREATE NEW SECTION 91-25-7, MISSISSIPPI  
59 CODE OF 1972, TO CREATE A STATUTORY SCHEME FOR APPORTIONMENT OF  
60 ESTATE TAXES; TO CREATE NEW SECTION 91-25-9, MISSISSIPPI CODE OF  
61 1972, TO PROVIDE FOR CREDITS AND DEFERRALS; TO CREATE NEW SECTION  
62 91-25-11, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR INSTANCES WHEN  
63 PROPERTY IS IMPRACTICABLE OR UNAVAILABLE FOR PAYMENT OF TAX; TO  
64 CREATE NEW SECTION 91-25-13, MISSISSIPPI CODE OF 1972, TO MAKE  
65 RECAPTURE PROVISIONS; TO CREATE NEW SECTION 91-25-15, MISSISSIPPI  
66 CODE OF 1972, TO PROVIDE FOR PAYMENT BY A FIDUCIARY; TO CREATE NEW  
67 SECTION 91-25-17, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR  
68 COLLECTION BY A FIDUCIARY; TO CREATE NEW SECTION 91-25-19,  
69 MISSISSIPPI CODE OF 1972, TO CREATE A RIGHT OF REIMBURSEMENT; TO  
70 CREATE NEW SECTION 91-25-21, MISSISSIPPI CODE OF 1972, TO PUT  
71 JURISDICTION IN THE CHANCERY COURT; TO CREATE NEW SECTION  
72 91-25-23, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR UNIFORMITY; TO  
73 CREATE NEW SECTION 91-25-25, MISSISSIPPI CODE OF 1972, TO PROVIDE  
74 FOR SEVERABILITY; TO CREATE NEW SECTION 91-25-27, MISSISSIPPI CODE  
75 OF 1972, TO MAKE TRANSITION PROVISIONS; TO PROVIDE FOR FOREIGN  
76 PERSONAL REPRESENTATIVES AND ANCILLARY ADMINISTRATION; TO CREATE  
77 NEW SECTION 91-7-501, MISSISSIPPI CODE OF 1972, TO ENACT  
78 DEFINITIONS; TO CREATE NEW SECTION 91-7-503, MISSISSIPPI CODE OF  
79 1972, TO ALLOW AN ESTATE DEBTOR TO SETTLE THE OBLIGATION OUTSIDE  
80 OF ADMINISTRATION; TO CREATE NEW SECTION 91-7-505, MISSISSIPPI  
81 CODE OF 1972, TO RELEASE A DEBTOR ACTING IN GOOD FAITH; TO CREATE  
82 NEW SECTION 91-7-507, MISSISSIPPI CODE OF 1972, TO PROHIBIT  
83 PAYMENT OR DELIVERY UNDER CERTAIN CIRCUMSTANCES; TO CREATE NEW  
84 SECTION 91-7-509, MISSISSIPPI CODE OF 1972, TO ALLOW A DOMICILIARY  
85 FOREIGN PERSONAL REPRESENTATIVE TO FILE AUTHENTICATED COPIES OF A



86 FOREIGN APPOINTMENT; TO CREATE NEW SECTION 91-7-511, MISSISSIPPI  
87 CODE OF 1972, TO PROVIDE FOR POWERS OF A FOREIGN PERSONAL  
88 REPRESENTATIVE; TO CREATE NEW SECTION 91-7-513, MISSISSIPPI CODE  
89 OF 1972, TO PROVIDE FOR THE CASE WHEN AN ADMINISTRATION IS PENDING  
90 IN THIS STATE; TO CREATE NEW SECTION 91-7-515, MISSISSIPPI CODE OF  
91 1972, TO PROVIDE FOR A NONRESIDENT DECEDENT; TO CREATE NEW SECTION  
92 91-7-517, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR JURISDICTION  
93 OVER A FOREIGN PERSONAL REPRESENTATIVE; TO CREATE NEW SECTION  
94 91-7-519, MISSISSIPPI CODE OF 1972, TO FURTHER PROVIDE FOR  
95 JURISDICTION OVER A FOREIGN PERSONAL REPRESENTATIVE; TO CREATE NEW  
96 SECTION 91-7-521, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR SERVICE  
97 OF PROCESS; TO CREATE NEW SECTION 91-7-523, MISSISSIPPI CODE OF  
98 1972, TO PROVIDE FOR THE EFFECT OF A FOREIGN ADJUDICATION; TO  
99 CREATE ARTICLE 5 OF THE UNIFORM TRUST CODE; TO CREATE NEW SECTION  
100 91-8-501, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR THE RIGHTS OF A  
101 BENEFICIARY'S CREDITOR OR ASSIGNEE; TO CREATE NEW SECTION  
102 91-8-502, MISSISSIPPI CODE OF 1972, TO CREATE A SPENDTHRIFT  
103 PROVISION; TO CREATE NEW SECTION 91-8-503, MISSISSIPPI CODE OF  
104 1972, TO PROVIDE THAT A DISCRETIONARY INTEREST IS A MERE  
105 EXPECTANCY; TO CREATE NEW SECTION 91-8-504, MISSISSIPPI CODE OF  
106 1972, TO PROVIDE FOR CREDITORS' CLAIMS AGAINST SETTLORS; TO CREATE  
107 NEW SECTION 91-8-505, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR  
108 DISTRIBUTIONS RELATIVE TO SUPPORT AND CERTAIN REMAINDER INTERESTS;  
109 TO CREATE NEW SECTION 91-8-506, MISSISSIPPI CODE OF 1972, TO  
110 PROVIDE THAT TRUST PROPERTY IS NOT SUBJECT TO PERSONAL OBLIGATIONS  
111 OF THE TRUSTEE; TO CREATE NEW SECTION 91-8-507, MISSISSIPPI CODE  
112 OF 1972, TO PROVIDE FOR THE REMOVAL OR REPLACEMENT POWER OVER A  
113 TRUSTEE; TO CREATE NEW SECTION 91-8-508, MISSISSIPPI CODE OF 1972,  
114 TO PROHIBIT JUDICIAL FORECLOSURE OF CERTAIN INTERESTS; TO AMEND  
115 SECTION 91-8-105, MISSISSIPPI CODE OF 1972, TO CONFORM; TO REPEAL  
116 SECTIONS 27-10-1 THROUGH 27-10-25, WHICH CONSTITUTE THE UNIFORM  
117 ESTATE TAX APPORTIONMENT ACT; TO REPEAL SECTIONS 89-21-1 THROUGH  
118 89-21-17, MISSISSIPPI CODE OF 1972, WHICH CONSTITUTE THE UNIFORM  
119 DISCLAIMER OF PROPERTY INTERESTS ACT; TO REPEAL SECTIONS 91-9-501  
120 THROUGH 91-9-511, MISSISSIPPI CODE OF 1972, WHICH CONSTITUTE THE  
121 FAMILY TRUST PRESERVATION ACT OF 1998; TO REPEAL SECTION 91-7-259,  
122 MISSISSIPPI CODE OF 1972, WHICH PROVIDES FOR FOREIGN FIDUCIARIES  
123 AND LAWSUITS AND DEBTS; AND FOR RELATED PURPOSES.

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

125 **SECTION 1.** The following shall be codified as Section  
126 91-27-1, Mississippi Code of 1972:

127 91-27-1. **Short title.** Sections 1 through 19 of this act may  
128 be cited as the Mississippi Real Property Transfer-on-death Act.



129           **SECTION 2.** The following shall be codified as Section  
130 91-27-3, Mississippi Code of 1972:

131           97-27-3. **Definitions.** (1) "Beneficiary" means a person who  
132 receives real property under a transfer-on-death deed.

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

135                   (3) "Joint owner with right of survivorship" or "joint  
136 owner" means an individual who owns real property concurrently  
137 with one or more other individuals with a right of survivorship.  
138 The term includes a joint tenant and a tenant by the entirety.  
139 The term does not include a tenant in common.

140                   (4) "Person" means an individual, corporation, business  
141 trust, estate, trust, partnership, limited liability company,  
142 association, joint venture, public corporation, government or  
143 governmental subdivision, agency, or instrumentality, or any other  
144 legal or commercial entity.

145                   (5) "Real property" means an interest in real property  
146 located in this state.

147                   (6) "Transfer-on-death deed" means a deed authorized  
148 under this chapter and does not refer to any other deed that  
149 transfers an interest in real property on the death of an  
150 individual.

151                   (7) "Transferor" means an individual who makes a  
152 transfer-on-death deed.



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

155 **SECTION 3.** The following shall be codified as Section  
156 91-27-5, Mississippi Code of 1972:

157 97-27-5. **Applicability.** This chapter applies to a  
158 transfer-on-death deed executed and acknowledged on or after the  
159 effective date of this act, by a transferor who dies on or after  
160 the effective date of this act.

161 **SECTION 4.** The following shall be codified as Section  
162 91-27-7, Mississippi Code of 1972:

163 97-27-7. **Nonexclusivity.** This chapter does not affect any  
164 method of transferring real property otherwise permitted under the  
165 laws of this state.

166 **SECTION 5.** The following shall be codified as Section  
167 91-27-9, Mississippi Code of 1972:

168 97-27-9. **Transfer-on-death deed authorized.** An individual  
169 may transfer the individual's interest in real property to one or  
170 more beneficiaries effective at the transferor's death by a  
171 transfer-on-death deed.

172 **SECTION 6.** The following shall be codified as Section  
173 91-27-11, Mississippi Code of 1972:

174 97-27-11. **Transfer-on-death deed revocable.** A  
175 transfer-on-death deed must be executed as set forth in Title 89,  
176 Chapter 3, Mississippi Code of 1972, relating to necessary



177 acknowledgements, and need not be executed with the formalities of  
178 a will.

179         **SECTION 7.** The following shall be codified as Section  
180 91-27-13, Mississippi Code of 1972:

181         91-27-13.   **Transfer-on-death deed nontestamentary.** A  
182 transfer-on-death deed is a nontestamentary instrument.

183         **SECTION 8.** The following shall be codified as Section  
184 91-27-15, Mississippi Code of 1972:

185         91-27-15.   **Capacity of transferor.** (a) The capacity  
186 required to make or revoke a transfer-on-death deed is the same as  
187 the capacity required to make a contract.

188         (b) A transfer-on-death deed may not be created through use  
189 of a power of attorney unless the transfer of real property  
190 through a transfer-on-death deed is specifically authorized in the  
191 power of attorney.

192         **SECTION 9.** The following shall be codified as Section  
193 91-27-17, Mississippi Code of 1972:

194         91-27-17.   **Requirements.** To be effective, a  
195 transfer-on-death deed must:

196                 (1) Except as otherwise provided in subsection (2),  
197 contain the essential elements and formalities of a recordable  
198 deed;

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



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

205 **SECTION 10.** The following shall be codified as Section  
206 91-27-19, Mississippi Code of 1972:

207 91-27-19. **Notice, delivery, acceptance, consideration not**  
208 **required.** A transfer-on-death deed is effective without:

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

211 (2) Consideration.

212

213 **SECTION 11.** The following shall be codified as Section  
214 91-27-21, Mississippi Code of 1972:

215 91-27-21. **Revocation by instrument authorized; revocation by**  
216 **act not permitted.** (a) Subject to subsections (d) and (e), an

217 instrument is effective to revoke a recorded transfer-on-death  
218 deed, or any part of it, if the instrument:

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

220 (A) A subsequent transfer-on-death deed that  
221 revokes the preceding transfer-on-death deed or part of the deed  
222 expressly or by inconsistency; or

223 (B) Except as provided by subsection (b), an  
224 instrument of revocation that expressly revokes the

225 transfer-on-death deed or part of the deed;



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

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

231 (b) A will does not revoke or supersede a transfer-on-death  
232 deed.

233 (c) If a marriage between the transferor and a designated  
234 beneficiary is dissolved after a transfer-on-death deed is  
235 recorded, a final judgment of the court dissolving the marriage  
236 operates to revoke the transfer-on-death deed as to that  
237 designated beneficiary.

238 (d) If a transfer-on-death deed is made by more than one (1)  
239 transferor, revocation by a transferor does not affect the deed as  
240 to the interest of another transferor who does not make that  
241 revocation.

242 (e) A transfer-on-death deed made by joint owners with right  
243 of survivorship is revoked only if it is revoked by all of the  
244 living joint owners.

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

247 **SECTION 12.** The following shall be codified as Section  
248 91-27-23, Mississippi Code of 1972:





249           91-27-23.   **Effect of transfer-on-death deed during**

250 **transferor's life.** During a transferor's life, a

251 transfer-on-death deed does not:

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

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

256                   (B) Homestead rights in the real property, if  
257 applicable; and

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

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

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

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

270           (5) Constitute a transfer triggering a "due-on-sale" or  
271 similar clause;

272           (6) Invoke statutory real estate notice or disclosure  
273 requirements;



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

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

278 **SECTION 13.** The following shall be codified as Section  
279 91-27-25, Mississippi Code of 1972:

280 91-27-25. **Effect of subsequent conveyance on**

281 **transfer-on-death deed.** An otherwise valid transfer-on-death deed  
282 is void as to any interest in real property that is conveyed by  
283 the transferor during the transferor's lifetime after the  
284 transfer-on-death deed is executed and recorded if:

285 (1) A valid instrument conveying the interest is  
286 recorded in the official records of the chancery clerk of the same  
287 county in which the transfer-on-death deed is recorded; and

288 (2) The recording of the instrument occurs before the  
289 transferor's death.

290 **SECTION 14.** The following shall be codified as Section  
291 91-27-27, Mississippi Code of 1972:

292 91-27-27. **Effect of transfer-on-death deed at transferor's**

293 **death.** On the death of the transferor, the following rules apply  
294 to an interest in real property that is the subject of a  
295 transfer-on-death deed and owned by the transferor at death except  
296 as otherwise provided: in the transfer-on-death deed; in this  
297 Title 91, Chapter 27, Mississippi Code of 1972; in Title 91,  
298 Chapter 29, Mississippi Code of 1972, relating to revocation by



299 divorce; in Section 91-1-25 relating to the prohibition on  
300 inheriting from a person whom one has killed; in Title 91, Chapter  
301 3, Mississippi Code of 1972, the Mississippi Uniform Simultaneous  
302 Death Act; and in Section 91-5-25 relating to the spousal right to  
303 renounce a will:

304           (1) If a transferor is a joint owner with right of  
305 survivorship who is survived by one or more other joint owners,  
306 the real property that is the subject of the transfer-on-death  
307 deed belongs to the surviving joint owner or owners. If a  
308 transferor is a joint owner with right of survivorship who is the  
309 last-surviving joint owner, the transfer-on-death deed is  
310 effective.

311           (2) The last-surviving joint owner may revoke the  
312 transfer-on-death deed subject to Section 91-27-19.

313           (3) A transfer-on-death deed transfers real property  
314 without covenant or warranty of title even if the deed contains a  
315 contrary provision.

316           (4) The interest in the property is transferred to a  
317 designated beneficiary in accordance with the deed, but the  
318 interest of a designated beneficiary is contingent on the  
319 designated beneficiary surviving the transferor. The interest of  
320 a designated beneficiary that fails to survive the transferor  
321 lapses.

322           (5) Concurrent interests are transferred to the  
323 beneficiaries in equal and undivided shares with no right of



324 survivorship, but if the transferor has identified two (2) or more  
325 designated beneficiaries to receive concurrent interests in the  
326 property, the share of one which lapses or fails for any reason is  
327 transferred to the other, or to the others in proportion to the  
328 interest of each in the remaining part of the property held  
329 concurrently.

330         **SECTION 15.** The following shall be codified as Section  
331 91-27-29, Mississippi Code of 1972:

332         91-27-29.   **Transfer-on-death deed property subject to liens**  
333 **and encumbrances at transferor's death; creditors' claims.**

334 Subject to Title 89, Chapter 5, Mississippi Code of 1972, relating  
335 to the recordation of instruments, a designated beneficiary takes  
336 the real property subject to all conveyances, encumbrances,  
337 assignments, contracts, mortgages, liens, and other interests to  
338 which the real property is subject at the transferor's death. For  
339 purposes of this subsection and Title 89, Chapter 5, Mississippi  
340 Code of 1972, the recording of the transfer-on-death deed is  
341 considered to have occurred at the transferor's death.

342         **SECTION 16.** The following shall be codified as Section  
343 91-27-31, Mississippi Code of 1972:

344         91-27-31.   **Disclaimer.** A designated beneficiary may disclaim  
345 all or part of the designated beneficiary's interest as provided  
346 by the Mississippi Uniform Disclaimer of Property Interests Act  
347 (2002/2010), Title 89, Chapter 22, Mississippi Code of 1972.



348           **SECTION 17.** The following shall be codified as Section  
349 91-27-33, Mississippi Code of 1972:

350           91-27-33. **Optional form for transfer-on-death deed.** The  
351 following form may be used to create a transfer-on-death deed.  
352 This chapter governs the effect of this or any other instrument  
353 used to create a transfer-on-death deed:

354                                       REVOCABLE TRANSFER-ON-DEATH DEED

355   NOTICE TO OWNER

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

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

361   IDENTIFYING INFORMATION

362 Owner or Owners Making This Deed:

363 \_\_\_\_\_

364 Printed name   Mailing address

365 \_\_\_\_\_

366 Printed name   Mailing address

367 Legal description of the property:

368 \_\_\_\_\_

369 PRIMARY BENEFICIARY

370 I designate the following beneficiary if the beneficiary survives  
371 me.

372 \_\_\_\_\_



373 Printed name Mailing address, if available

374 ALTERNATE BENEFICIARY - Optional

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

377 \_\_\_\_\_

378 Printed name Mailing address, if available

379 TRANSFER-ON-DEATH

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

382 Before my death, I have the right to revoke this deed as set  
383 forth in Section 97-27-21, Mississippi Code of 1972.

384 SIGNATURE OF OWNER OR OWNERS MAKING THIS DEED

385 \_\_\_\_\_

386 Signature Date

387 \_\_\_\_\_

388 Signature Date

389 ACKNOWLEDGMENT

390 (insert acknowledgment for deed here)

391 **SECTION 18.** The following shall be codified as Section  
392 91-27-35, Mississippi Code of 1972:

393 91-27-35. **Optional form of revocation.** The following form  
394 may be used to create an instrument of revocation of a  
395 transfer-on-death deed. This chapter governs the effect of this  
396 or any other instrument used to revoke a transfer-on-death deed.

397 REVOCATION OF TRANSFER-ON-DEATH DEED



398

NOTICE TO OWNER

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

402

IDENTIFYING INFORMATION

403 Owner or Owners of Property Making This Revocation:

404

\_\_\_\_\_

405

Printed name

Mailing address

406

\_\_\_\_\_

407

Printed name

Mailing address

408

Legal description of the property:

409

\_\_\_\_\_

410

REVOCATION

411 I revoke all my previous transfers of this property by  
412 transfer-on-death deed.

413

SIGNATURE OF OWNER OR OWNERS MAKING THIS REVOCATION

414

\_\_\_\_\_

415

Signature

Date

416

\_\_\_\_\_

417

Signature

Date

418

ACKNOWLEDGMENT

419 (insert acknowledgment here)

420

**SECTION 19.** The following shall be codified as Section

421

91-27-37, Mississippi Code of 1972:



422           91-27-37.   **Relation to electronic signatures in Global and**  
423 **National Commerce Act.** This chapter modifies, limits, and  
424 supersedes the federal Electronic Signatures in Global and  
425 National Commerce Act, 15 U.S.C. Section 7001, et seq., but does  
426 not modify, limit, or supersede Section 101(c) of that act, 15  
427 U.S.C. Section 7001(c), or authorize electronic delivery of any of  
428 the notices described in Section 103(b) of that act, 15 U.S.C.

429           **SECTION 20.** The following shall be codified as Section  
430 91-29-1, Mississippi Code of 1972:

431           91-29-1   **Will provisions made before dissolution of marriage.**

432       (a) In this section:

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

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

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

438               (2) "Relative" means an individual related to another  
439 individual by:

440                       (A) Consanguinity, as determined under Section  
441 91-29-17; or

442                       (B) Affinity, as determined under Section  
443 91-29-19.

444       (b) If, after the testator makes a will, the testator's  
445 marriage is dissolved by divorce, annulment, or a declaration that





446 the marriage is void, unless the will expressly provides  
447 otherwise:

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

452 (2) All provisions in the will disposing of property to  
453 an irrevocable trust in which a former spouse or a relative of a  
454 former spouse who is not a relative of the testator is a  
455 beneficiary or is nominated to serve as trustee or in another  
456 fiduciary capacity or that confers a general or special power of  
457 appointment on a former spouse or a relative of a former spouse  
458 who is not a relative of the testator shall be read to instead  
459 dispose of the property to a trust the provisions of which are  
460 identical to the irrevocable trust, except any provision in the  
461 irrevocable trust:

462 (A) Conferring a beneficial interest or a general  
463 or special power of appointment to the former spouse or a relative  
464 of the former spouse who is not a relative of the testator shall  
465 be treated as if the former spouse and each relative of the former  
466 spouse who is not a relative of the testator had disclaimed the  
467 interest granted in the provision; and

468 (B) Nominating the former spouse or a relative of  
469 the former spouse who is not a relative of the testator to serve  
470 as trustee or in another fiduciary capacity, or trust protector,



471 trust advisor, investment advisor or similar capacity, shall be  
472 treated as if the former spouse and each relative of the former  
473 spouse who is not a relative of the testator had died immediately  
474 before the dissolution of the marriage.

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

477 (1) A court order; or

478 (2) An express provision of a contract relating to the  
479 division of the marital estate entered into between the testator  
480 and the testator's former spouse before, during, or after the  
481 marriage.

482 **SECTION 21.** The following shall be codified as Section  
483 91-29-3, Mississippi Code of 1972:

484 91-29-3. **Treatment of decedent's former spouse.** A person is  
485 not a surviving spouse of a decedent if the person's marriage to  
486 the decedent has been dissolved by divorce, annulment, or a  
487 declaration that the marriage is void, unless:

488 (1) As the result of a subsequent marriage, the person  
489 is married to the decedent at the time of death; and

490 (2) The subsequent marriage is not declared void.

491 **SECTION 22.** The following shall be codified as Section  
492 91-29-5, Mississippi Code of 1972:

493 91-29-5. **Definitions.** In this chapter:



494 (1) "Disposition or appointment of property" includes a  
495 transfer of property to or a provision of another benefit to a  
496 beneficiary under a trust instrument.

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

500 (3) "Relative" means an individual who is related to  
501 another individual by consanguinity or affinity, as determined  
502 under Sections 91-29-17 and 91-25-19.

503 (4) "Revocable," with respect to a disposition,  
504 appointment, provision, or nomination, means a disposition to,  
505 appointment of, provision in favor of, or nomination of an  
506 individual's spouse that is contained in a trust instrument  
507 executed by the individual before the dissolution of the  
508 individual's marriage to the spouse and that the individual was  
509 solely empowered by law or by the trust instrument to revoke  
510 regardless of whether the individual had the capacity to exercise  
511 the power at that time.

512 **SECTION 23.** The following shall be codified as Section  
513 91-29-7, Mississippi Code of 1972:

514 91-29-7. **Revocation of certain nontestamentary transfers;**  
515 **treatment of former spouse as beneficiary under certain policies**  
516 **or plans.** (a) The dissolution of the marriage revokes a  
517 provision in a trust instrument that was executed by a divorced



518 individual as settlor before the divorced individual's marriage  
519 was dissolved and that:

520 (1) Is a revocable disposition or appointment of  
521 property made to the divorced individual's former spouse or any  
522 relative of the former spouse who is not a relative of the  
523 divorced individual;

524 (2) Revocably confers a general or special power of  
525 appointment on the divorced individual's former spouse or any  
526 relative of the former spouse who is not a relative of the  
527 divorced individual; or

528 (3) Revocably nominates the divorced individual's  
529 former spouse or any relative of the former spouse who is not a  
530 relative of the divorced individual to serve:

531 (A) As a personal representative, trustee,  
532 conservator, agent, or guardian; or

533 (B) In another fiduciary or representative  
534 capacity.

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

537 (1) A court order;

538 (2) The express terms of a trust instrument executed by  
539 the divorced individual before the individual's marriage was  
540 dissolved; or

541 (3) An express provision of a contract relating to the  
542 division of the marital estate entered into between the divorced



543 individual and the individual's former spouse before, during, or  
544 after the marriage.

545 (c) Sections 91-29-21 and 91-29-23 govern the designation of  
546 a former spouse as a beneficiary of certain life insurance  
547 policies or as a beneficiary under certain retirement benefit  
548 plans or other financial plans.

549 **SECTION 24.** The following shall be codified as Section  
550 91-29-9, Mississippi Code of 1972:

551 91-29-9. **Effect of revocation.** (a) An interest granted in  
552 a provision of a trust instrument that is revoked under Section  
553 91-29-7(a) (1) or (2) passes as if the former spouse of the  
554 divorced individual who executed the trust instrument and each  
555 relative of the former spouse who is not a relative of the  
556 divorced individual disclaimed the interest granted in the  
557 provision.

558 (b) An interest granted in a provision of a trust instrument  
559 that is revoked under Section 91-29-7(a) (3) passes as if the  
560 former spouse and each relative of the former spouse who is not a  
561 relative of the divorced individual died immediately before the  
562 dissolution of the marriage.

563 **SECTION 25.** The following shall be codified as Section  
564 91-29-11, Mississippi Code of 1972:

565 91-29-11. **Liability of certain purchasers or recipients of**  
566 **certain payments, benefits, or property.** A bona fide purchaser of  
567 property from a divorced individual's former spouse or any



568 relative of the former spouse who is not a relative of the  
569 divorced individual or a person who receives from the former  
570 spouse or any relative of the former spouse who is not a relative  
571 of the divorced individual a payment, benefit, or property in  
572 partial or full satisfaction of an enforceable obligation:

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

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

577 **SECTION 26.** The following shall be codified as Section  
578 91-29-13, Mississippi Code of 1972:

579 91-29-13. **Liability of former spouse for certain payments,**  
580 **benefits or property.** A divorced individual's former spouse or  
581 any relative of the former spouse who is not a relative of the  
582 divorced individual who, not for value, receives a payment,  
583 benefit, or property to which the former spouse or the relative of  
584 the former spouse who is not a relative of the divorced individual  
585 is not entitled as a result of Sections 91-29-7 (a) and (b):

586 (1) Shall return the payment, benefit, or property to  
587 the person who is entitled to the payment, benefit, or property  
588 under this chapter; or

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



592           **SECTION 27.** The following shall be codified as Section  
593 91-29-15, Mississippi Code of 1972:

594           91-29-15.   **Certain trusts with divorced individuals as joint**  
595 **settlers.** (a) This section applies only to a trust created under  
596 a trust instrument that:

597                   (1) Was executed by two (2) married individuals as  
598 settlers whose marriage to each other is subsequently dissolved;  
599 and

600                   (2) Includes a provision described by Section  
601 91-29-7(a).

602           (b) On the death of one (1) of the divorced individuals who  
603 is a settlor of a trust to which this section applies, the trustee  
604 shall divide the trust into two (2) trusts, each of which shall be  
605 composed of the property attributable to the contributions of only  
606 one (1) of the divorced individuals.

607           (c) An action authorized in a trust instrument described by  
608 subsection (a) that requires the actions of both divorced  
609 individuals may be taken with respect to a trust established in  
610 accordance with subsection (b) from the surviving divorced  
611 individual's contributions solely by that divorced individual.

612           (d) The provisions of this chapter apply independently to  
613 each trust established in accordance with subsection (b) as if the  
614 divorced individual from whose contributions the trust was  
615 established had been the only settlor to execute the trust  
616 instrument described by subsection (a).



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

619 (1) A court order;

620 (2) The express terms of a trust instrument executed by  
621 the two (2) divorced individuals before their marriage was  
622 dissolved; or

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

626 **SECTION 28.** The following shall be codified as Section  
627 91-29-17, Mississippi Code of 1972:

628 91-29-17. **Designation of former spouse or relative of former**  
629 **spouse on certain multiple-party accounts.** (a) In this section:

630 (1) "Beneficiary," "multiple-party account," "party,"  
631 "P.O.D. account," "P.O.D. payee," "T.O.D. account," and "T.O.D.  
632 payee" have the meanings assigned in Title 91, Chapter 21,  
633 Mississippi Code of 1972.

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

636 (b) If a decedent established a P.O.D. account, T.O.D.  
637 account, or other multiple-party account and the decedent's  
638 marriage was later dissolved by divorce, annulment, or a  
639 declaration that the marriage is void, any payable on request  
640 after death designation provision with respect to that account in  
641 favor of the decedent's former spouse or a relative of the former





642 spouse who is not a relative of the decedent is not effective as  
643 to that spouse or relative unless:

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

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

650 (3) The former spouse or the former spouse's relative  
651 is designated to receive the proceeds or benefits in trust for, on  
652 behalf of, or for the benefit of a child or dependent of either  
653 the decedent or the former spouse.

654 (c) If a designation is not effective under subsection (b),  
655 a multiple-party account is payable to the named alternative  
656 P.O.D. payee, T.O.D. payee, or beneficiary or, if an alternative  
657 P.O.D. payee, T.O.D. payee, or beneficiary is not named, to the  
658 estate of the decedent.

659 (d) A financial institution or other person obligated to pay  
660 an account described by subsection (b) that pays the account to  
661 the former spouse or the former spouse's relative as P.O.D. payee,  
662 T.O.D. payee, or beneficiary under a designation that is not  
663 effective under subsection (b) is liable for payment of the  
664 account to the person provided by subsection (c) only if:

665 (1) Before payment of the account to the designated  
666 P.O.D. payee, T.O.D. payee, or beneficiary, the payor receives



667 written notice at the home office or principal office of the payor  
668 from an interested person that the designation of the P.O.D.  
669 payee, T.O.D. payee, or beneficiary is not effective under  
670 subsection (b); and

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

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

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

680 **SECTION 29.** The following shall be codified as Section  
681 91-29-19, Mississippi Code of 1972:

682 91-29-19. **Determination of consanguinity.** (a) Two (2)  
683 individuals are related to each other by consanguinity if:

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

685 (2) They share a common ancestor.

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

688 **SECTION 30.** The following shall be codified as Section  
689 91-29-29, Mississippi Code of 1972:

690 91-29-29. **Determination of affinity.** (a) Two (2)  
691 individuals are related to each other by affinity if:



692 (1) They are married to each other; or  
693 (2) The spouse of one (1) of the individuals is related  
694 by consanguinity to the other individual.

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

697 **SECTION 31.** The following shall be codified as Section  
698 91-29-23, Mississippi Code of 1972:

699 91-29-23. **Pre-decree designation of ex-spouse as beneficiary**  
700 **of life insurance.** (a) If a decree of divorce or annulment is  
701 rendered after an insured has designated the insured's spouse as a  
702 beneficiary under a life insurance policy in force at the time of  
703 rendition, a provision in the policy in favor of the insured's  
704 former spouse is not effective unless:

705 (1) The decree designates the insured's former spouse  
706 as the beneficiary;

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

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

712 (b) If a designation is not effective under subsection (a),  
713 the proceeds of the policy are payable to the named alternative  
714 beneficiary or, if there is not a named alternative beneficiary,  
715 to the estate of the insured.



716 (c) An insurer who pays the proceeds of a life insurance  
717 policy issued by the insurer to the beneficiary under a  
718 designation that is not effective under subsection (a) is liable  
719 for payment of the proceeds to the person or estate provided by  
720 subsection (b) only if:

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

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

728 **SECTION 32.** The following shall be codified as Section  
729 91-29-25, Mississippi Code of 1972:

730 91-29-25. **Pre-decree designation of ex-spouse as beneficiary**  
731 **in retirement benefits and other financial plans.** (a) If a  
732 decree of divorce or annulment is rendered after a spouse, acting  
733 in the capacity of a participant, annuitant, or account holder,  
734 has designated the other spouse as a beneficiary under an  
735 individual retirement account, employee stock option plan, stock  
736 option, or other form of savings, bonus, profit-sharing, or other  
737 employer plan or financial plan of an employee or a participant in  
738 force at the time of rendition, the designating provision in the  
739 plan in favor of the other former spouse is not effective unless:



740 (1) The decree designates the other former spouse as  
741 the beneficiary;

742 (2) The designating former spouse redesignates the  
743 other former spouse as the beneficiary after rendition of the  
744 decree; or

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

748 (b) If a designation is not effective under subsection (a),  
749 the benefits or proceeds are payable to the named alternative  
750 beneficiary or, if there is not a named alternative beneficiary,  
751 to the designating former spouse.

752 (c) A business entity, employer, pension trust, insurer,  
753 financial institution, or other person obligated to pay retirement  
754 benefits or proceeds of a financial plan covered by this section  
755 who pays the benefits or proceeds to the beneficiary under a  
756 designation of the other former spouse that is not effective under  
757 subsection (a) is liable for payment of the benefits or proceeds  
758 to the person provided by subsection (b) only if:

759 (1) Before payment of the benefits or proceeds to the  
760 designated beneficiary, the payor receives written notice at the  
761 home office or principal office of the payor from an interested  
762 person that the designation of the beneficiary or fiduciary is not  
763 effective under subsection (a); and



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

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

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

775           **SECTION 33.** The following shall be codified as Section  
776 91-25-1, Mississippi Code of 1972:

777           91-25-1. **Short title.** This chapter may be cited as the  
778 Mississippi Uniform Estate Tax Apportionment Act.

779           **SECTION 34.** The following shall be codified as Section  
780 91-25-3, Mississippi Code of 1972:

781           91-25-3. **Definitions.** In this chapter:

782           (1) "Apportionable estate" means the value of the gross  
783 estate as finally determined for purposes of the estate tax to be  
784 apportioned reduced by:

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



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

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

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

794 (3) "Estate tax" means a federal, state, or foreign tax  
795 imposed because of the death of an individual and interest and  
796 penalties associated with the tax. The term does not include an  
797 inheritance tax, income tax, or generation-skipping transfer tax  
798 other than a generation-skipping transfer tax incurred on a direct  
799 skip taking effect at death.

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

802 (5) "Person" means an individual, corporation, business  
803 trust, estate, trust, partnership, limited liability company,  
804 association, joint venture, public corporation, government,  
805 governmental subdivision, agency, or instrumentality, or any other  
806 legal or commercial entity.

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

810 (7) "Time-limited interest" means an interest in property  
811 which terminates on a lapse of time or on the occurrence or



812 nonoccurrence of an event or which is subject to the exercise of  
813 discretion that could transfer a beneficial interest to another  
814 person. The term does not include a cotenancy unless the  
815 cotenancy itself is a time-limited interest. The term also does  
816 not include an interest in property to the extent the beneficiary  
817 has the sole right to accelerate, require or elect to receive a  
818 distribution of the property.

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

824 **SECTION 35.** The following shall be codified as Section  
825 91-25-5, Mississippi Code of 1972:

826 91-25-5. **Apportionment by will or other dispositive**

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

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

832 (2) Any portion of an estate tax not apportioned under  
833 paragraph (1) must be apportioned in accordance with any provision  
834 of a revocable trust of which the decedent was the settlor which  
835 expressly and unambiguously directs the apportionment of an estate  
836 tax. If conflicting apportionment provisions appear in two (2) or





837 more revocable trust instruments, the provision in the most  
838 recently dated instrument prevails. For purposes of this  
839 paragraph:

840 (A) A trust is revocable if it was revocable  
841 immediately after the trust instrument was executed, even if the  
842 trust subsequently becomes irrevocable; and

843 (B) The date of an amendment to a revocable trust  
844 instrument is the date of the amended instrument only if the  
845 amendment contains an apportionment provision.

846 (3) If any portion of an estate tax is not apportioned  
847 under paragraph (1) or (2), and a provision in any other  
848 dispositive instrument expressly and unambiguously directs that  
849 any interest in the property disposed of by the instrument is or  
850 is not to be applied to the payment of the estate tax attributable  
851 to the interest disposed of by the instrument, the provision  
852 controls the apportionment of the tax to that interest.

853 (b) Subject to subsection (c), and unless the decedent  
854 expressly and unambiguously directs the contrary, the following  
855 rules apply:

856 (1) If an apportionment provision directs that a person  
857 receiving an interest in property under an instrument is to be  
858 exonerated from the responsibility to pay an estate tax that would  
859 otherwise be apportioned to the interest, the tax attributable to  
860 the exonerated interest must be apportioned ratably among all the



861 other persons receiving interests in the apportionable estate that  
862 are not exonerated from apportionment of the tax.

863 (2) If an apportionment provision directs that an  
864 estate tax is to be apportioned to an interest in property a  
865 portion of which qualifies for a marital or charitable deduction,  
866 the estate tax must first be apportioned ratably among the holders  
867 of the portion that does not qualify for a marital or charitable  
868 deduction and then apportioned ratably among the holders of the  
869 deductible portion to the extent that the value of the  
870 nondeductible portion is insufficient.

871 (3) Except as otherwise provided in paragraph (4), if  
872 an apportionment provision directs that an estate tax be  
873 apportioned to property in which one or more time-limited  
874 interests exist, other than interests in specified property under  
875 Section 91-25-13, the tax must be apportioned to the principal of  
876 that property, regardless of the deductibility of some of the  
877 interests in that property.

878 (4) If an apportionment provision directs that an  
879 estate tax is to be apportioned to the holders of interests in  
880 property in which one or more time-limited interests exist and a  
881 charity has an interest that otherwise qualifies for an estate tax  
882 charitable deduction, the tax must first be apportioned, to the  
883 extent feasible, to interests in property that have not been  
884 distributed to the persons entitled to receive the interests. No  
885 tax shall be paid from a charitable remainder annuity trust or



886 charitable remainder unitrust described in Section 664 of the  
887 Internal Revenue Code (26 U.S.C. Section 664) and created during  
888 the decedent's life.

889 (c) A provision that apportions an estate tax is ineffective  
890 to the extent that it increases the tax apportioned to a person  
891 having an interest in the gross estate over which the decedent had  
892 no power to transfer immediately before the decedent executed the  
893 instrument in which the apportionment direction was made. For  
894 purposes of this subsection, a testamentary power of appointment  
895 is a power to transfer the property that is subject to the power.

896 **SECTION 36.** The following shall be codified as Section  
897 91-25-7, Mississippi Code of 1972:

898 91-25-7. **Statutory apportionment of estate taxes.** To the  
899 extent that apportionment of an estate tax is not controlled by an  
900 instrument described in Section 91-25-5 and except as otherwise  
901 provided in Sections 91-25-11 and 91-25-13, the following rules  
902 apply:

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

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

909 (3) If property is included in the decedent's gross  
910 estate because of Section 2044 of the Internal Revenue Code of



911 1986 or any similar estate tax provision, the difference between  
912 the total estate tax for which the decedent's estate is liable and  
913 the amount of estate tax for which the decedent's estate would  
914 have been liable if the property had not been included in the  
915 decedent's gross estate is apportioned ratably among the holders  
916 of interests in the property. The balance of the tax, if any, is  
917 apportioned ratably to each other person having an interest in the  
918 apportionable estate.

919 (4) Except as otherwise provided in Section  
920 91-25-5(b) (4) and except as to property to which Section 91-25-13  
921 applies, an estate tax apportioned to persons holding interests in  
922 property subject to a time-limited interest must be apportioned,  
923 without further apportionment, to the principal of that property.

924 **SECTION 37.** The following shall be codified as Section  
925 91-25-9, Mississippi Code of 1972:

926 91-25-9. Credits and deferrals. Except as otherwise  
927 provided in Sections 91-25-11 and 91-25-13, the following rules  
928 apply to credits and deferrals of estate taxes:

929 (1) A credit resulting from the payment of gift taxes  
930 or from estate taxes paid on property previously taxed inures  
931 ratably to the benefit of all persons to which the estate tax is  
932 apportioned.

933 (2) A credit for state or foreign estate taxes inures  
934 ratably to the benefit of all persons to which the estate tax is  
935 apportioned, except that the amount of a credit for a state or



936 foreign tax paid by a beneficiary of the property on which the  
937 state or foreign tax was imposed, directly or by a charge against  
938 the property, inures to the benefit of the beneficiary.

939 (3) If payment of a portion of an estate tax is  
940 deferred because of the inclusion in the gross estate of a  
941 particular interest in property, the benefit of the deferral  
942 inures ratably to the persons to which the estate tax attributable  
943 to the interest is apportioned. The burden of any interest  
944 charges incurred on a deferral of taxes and the benefit of any tax  
945 deduction associated with the accrual or payment of the interest  
946 charge is allocated ratably among the persons receiving an  
947 interest in the property.

948 **SECTION 38.** The following shall be codified as Section  
949 91-25-11, Mississippi Code of 1972:

950 91-25-11. **Insulated property; advancement of tax.** (a) In  
951 this section:

952 (1) "Advanced fraction" means a fraction that has as  
953 its numerator the amount of the advanced tax and as its  
954 denominator the value of the interests in insulated property to  
955 which that tax is attributable.

956 (2) "Advanced tax" means the aggregate amount of estate  
957 tax attributable to interests in insulated property which is  
958 required to be advanced by uninsulated holders under subsection  
959 (c).



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

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

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

968 (b) If an estate tax is to be advanced under subsection (c)  
969 by persons holding interests in uninsulated property subject to a  
970 time-limited interest other than property to which Section  
971 91-25-13 applies, the tax must be advanced, without further  
972 apportionment, from the principal of the uninsulated property.

973 (c) Subject to Section 91-25-17(b) and (d), an estate tax  
974 attributable to interests in insulated property must be advanced  
975 ratably by uninsulated holders. If the value of an interest in  
976 uninsulated property is less than the amount of estate taxes  
977 otherwise required to be advanced by the holder of that interest,  
978 the deficiency must be advanced ratably by the persons holding  
979 interests in properties that are excluded from the apportionable  
980 estate under Section 91-25-3(1)(B) as if those interests were in  
981 uninsulated property.

982 (d) A court having jurisdiction to determine the  
983 apportionment of an estate tax may require a beneficiary of an  
984 interest in insulated property to pay all or part of the estate



985 tax otherwise apportioned to the interest if the court finds that  
986 it would be substantially more equitable for that beneficiary to  
987 bear the tax liability personally than for that part of the tax to  
988 be advanced by uninsulated holders.

989 (e) When a distribution of insulated property is made, each  
990 uninsulated holder may recover from the distributee a ratable  
991 portion of the advanced fraction of the property distributed. To  
992 the extent that undistributed insulated property ceases to be  
993 insulated, each uninsulated holder may recover from the property a  
994 ratable portion of the advanced fraction of the total  
995 undistributed property.

996 (f) Upon payment by an uninsulated holder of estate tax  
997 required to be advanced, a court may require the beneficiary of an  
998 interest in insulated property to provide a bond or other  
999 security, including a recordable lien on the property of the  
1000 beneficiary, for repayment of the advanced tax.

1001 **SECTION 39.** The following shall be codified as Section  
1002 91-25-13, Mississippi Code of 1972:

1003 91-25-13. **Apportionment and recapture of special elective**  
1004 **benefits.** (a) In this section:

1005 (1) "Special elective benefit" means a reduction in an  
1006 estate tax obtained by an election for:

1007 (A) A reduced valuation of specified property that  
1008 is included in the gross estate;



1009 (B) A deduction from the gross estate, other than  
1010 a marital or charitable deduction, allowed for specified property;  
1011 or

1012 (C) An exclusion from the gross estate of  
1013 specified property.

1014 (2) "Specified property" means property for which an  
1015 election has been made for a special elective benefit.

1016 (b) If an election is made for one or more special elective  
1017 benefits, an initial apportionment of a hypothetical estate tax  
1018 must be computed as if no election for any of those benefits had  
1019 been made. The aggregate reduction in estate tax resulting from  
1020 all elections made must be allocated among holders of interests in  
1021 the specified property in the proportion that the amount of  
1022 deduction, reduced valuation, or exclusion attributable to each  
1023 holder's interest bears to the aggregate amount of deductions,  
1024 reduced valuations, and exclusions obtained by the decedent's  
1025 estate from the elections. If the estate tax initially  
1026 apportioned to the holder of an interest in specified property is  
1027 reduced to zero, any excess amount of reduction reduces ratably  
1028 the estate tax apportioned to other persons that receive interests  
1029 in the apportionable estate.

1030 (c) An additional estate tax imposed to recapture all or  
1031 part of a special elective benefit must be charged to the persons  
1032 that are liable for the additional tax under the law providing for  
1033 the recapture.





1034           **SECTION 40.** The following shall be codified as Section  
1035 91-25-15, Mississippi Code of 1972:

1036           91-25-15.   **Securing payment of estate tax from property in**  
1037 **possession of fiduciary.** (a) A fiduciary may defer a

1038 distribution of property until the fiduciary is satisfied that  
1039 adequate provision for payment of the estate tax has been made.

1040           (b) A fiduciary may withhold from a distributee an amount  
1041 equal to the amount of estate tax apportioned to an interest of  
1042 the distributee and the estate tax required to be advanced by the  
1043 distributee.

1044           (c) As a condition to a distribution, a fiduciary may  
1045 require the distributee to provide a bond or other security for  
1046 the portion of the estate tax apportioned to the distributee and  
1047 also for the estate tax required to be advanced by the  
1048 distributee.

1049           **SECTION 41.** The following shall be codified as Section  
1050 91-25-17, Mississippi Code of 1972:

1051           91-25-17.   **Collection of estate tax by fiduciary.** (a) A  
1052 fiduciary responsible for payment of an estate tax may collect  
1053 from any person the estate tax apportioned to and the tax required  
1054 to be advanced by the person.

1055           (b) Except as otherwise provided in Section 27-10-61, any  
1056 estate tax due from a person that cannot be collected from the  
1057 person may be collected by the fiduciary from other persons in the  
1058 following order of priority:



1059 (1) Any person having an interest in the apportionable  
1060 estate which is not exonerated from the tax;

1061 (2) Any other person having an interest in the  
1062 apportionable estate; or

1063 (3) Any person having an interest in the gross estate.

1064 (c) A domiciliary fiduciary may recover from an ancillary  
1065 personal representative the estate tax apportioned to the property  
1066 controlled by the ancillary personal representative.

1067 (d) The total tax collected from a person under this act may  
1068 not exceed the value of the person's interest.

1069 **SECTION 42.** The following shall be codified as Section  
1070 91-25-19, Mississippi Code of 1972:

1071 91-25-19. **Right of reimbursement.** (a) A person required  
1072 under Section 91-25-17 to pay an estate tax greater than the  
1073 amount due from the person under Section 91-25-5 or 91-25-7 has a  
1074 right to reimbursement from another person to the extent that the  
1075 other person has not paid the tax required by Section 91-25-5 or  
1076 91-25-7 and a right to reimbursement ratably from other persons to  
1077 the extent that each has not contributed a portion of the amount  
1078 collected under Section 91-25-17(b). The right to reimbursement  
1079 includes the right to receive interest on the amount of the estate  
1080 tax payment from the date of the payment to the date of  
1081 reimbursement at the interest rate that would be charged during  
1082 such period on an estate tax deficiency by the taxing authority  
1083 that imposed the estate tax. The right of reimbursement also



1084 includes the reasonable costs of collection, including attorney's  
1085 fees.

1086 (b) A fiduciary may enforce the right of reimbursement under  
1087 subsection (a) on behalf of the person that is entitled to the  
1088 reimbursement and shall take reasonable steps to do so if  
1089 requested by the person.

1090 **SECTION 43.** The following shall be codified as Section  
1091 91-25-21, Mississippi Code of 1972:

1092 91-25-21. **Action to determine or enforce act.** (a) The  
1093 chancery court has jurisdiction and all power necessary to make  
1094 the prorations and the orders directing the payment of amounts of  
1095 tax contemplated by this chapter.

1096 (b) Such jurisdiction may be invoked by petition filed in  
1097 the chancery court by an executor, administrator, temporary  
1098 administrator, trustee or other person acting in a fiduciary  
1099 capacity, transferee, beneficiary of the gross estate, or any  
1100 other person having such an interest as may in the judgment of the  
1101 chancery court entitle such person to file such a petition.

1102 (c) The chancery court, upon making a determination as  
1103 provided in this chapter, shall make a decree or order directing  
1104 the executor, administrator or other fiduciary to charge the  
1105 prorated amounts against the persons against whom the tax has been  
1106 so prorated, insofar as such person is in possession of property  
1107 or interests of such persons against whom such charge has been  
1108 made, and summarily directing all other persons against whom the



1109 tax has been so prorated or who are in possession of property or  
1110 interests of such persons to make payment of such prorated amounts  
1111 to such executor, administrator or other fiduciary or to another  
1112 person who has paid such tax.

1113         **SECTION 44.** The following shall be codified as Section  
1114 91-25-23, Mississippi Code of 1972:

1115         91-25-23.   **Uniformity of application and construction.** In  
1116 applying and construing this chapter, consideration must be given  
1117 to the need to promote uniformity of the law with respect to its  
1118 subject matter among states that enact it.

1119         **SECTION 45.** The following shall be codified as Section  
1120 91-25-25, Mississippi Code of 1972:

1121         91-25-25.   **Severability.** If any provision of this chapter or  
1122 the application thereof to any person or circumstance is held  
1123 invalid, the invalidity does not affect other provisions or  
1124 applications of this chapter which can be given effect without the  
1125 invalid provision or application, and to this end the provisions  
1126 of this chapter are severable.

1127         **SECTION 46.** The following shall be codified as Section  
1128 91-25-27, Mississippi Code of 1972:

1129         91-25-27.   **Delayed application.** (a) This chapter does not  
1130 apply to the estate of a decedent who dies on or within one (1)  
1131 year after the effective date of this act, nor with respect to a  
1132 decedent who dies more than one (1) year after the effective date  
1133 of this act, if the decedent continuously lacked testamentary



1134 capacity from the expiration of the one-year period until the date  
1135 of death.

1136 (b) With respect to a decedent who dies on or after the  
1137 effective date of this act, to whom this chapter does not apply,  
1138 estate taxes must be apportioned under the law in effect on the  
1139 day before the effective date of this act.

1140 (c) Notwithstanding the provisions of subsection (a) and  
1141 (b), this chapter applies with respect to a decedent to whom the  
1142 provisions would not otherwise apply if the decedent expressly and  
1143 unambiguously directs that the provisions shall apply to such  
1144 decedent.

1145 **SECTION 47.** The following shall be codified as Section  
1146 91-7-501 Mississippi Code of 1972:

1147 91-7-501. As used in this act:

1148 (a) "Local administration" means administration by a  
1149 personal representative appointed in this state pursuant to  
1150 appointment proceedings.

1151 (b) "Personal representative" means an executor, an  
1152 administrator with or without the will annexed, or other  
1153 representative authorized in a court of competent jurisdiction to  
1154 conduct an estate administration.

1155 (c) "Local personal representative" includes any  
1156 personal representative appointed in this state by appointment  
1157 proceedings and excludes foreign personal representatives who  
1158 acquire the power of a local personal representative under Section



1159 91-7-509.

1160 (d) "Resident creditor" means a person domiciled in, or  
1161 doing business in this state, who is, or could be, a claimant  
1162 against an estate of a nonresident decedent.

1163 (e) "Foreign personal representative" means a personal  
1164 representative appointed by another jurisdiction.

1165 **SECTION 48.** The following shall be codified as Section  
1166 91-7-503, Mississippi Code of 1972:

1167 91-7-503. At any time after the expiration of sixty (60)  
1168 days from the death of a nonresident decedent, any person indebted  
1169 to the estate of the nonresident decedent or having possession or  
1170 control of personal property, or of an instrument evidencing a  
1171 debt, obligation, stock or chose in action belonging to the estate  
1172 of the nonresident decedent may pay the debt, deliver the personal  
1173 property, or the instrument evidencing the debt, obligation, stock  
1174 or chose in action, to the domiciliary foreign personal  
1175 representative of the nonresident decedent upon being presented  
1176 with proof of his appointment, including the admitted will and  
1177 letters testamentary or letters of administration or substantial  
1178 equivalent, authenticated under the Acts of Congress under 28  
1179 U.S.C.A. Section 1739, and an affidavit made by or on behalf of  
1180 the personal representative stating:

1181 (a) The date of the death of the nonresident decedent;

1182 (b) That no local administration, or application or petition  
1183 therefor, is pending in this state; and



1184 (c) That the domiciliary foreign personal representative is  
1185 entitled to payment or delivery.

1186 **SECTION 49.** The following shall be codified as Section  
1187 91-7-505, Mississippi Code of 1972:

1188 91-7-505. Payment or delivery made in good faith on the  
1189 basis of the proof of authority, including the admitted will and  
1190 letters testamentary or letters of administration or substantial  
1191 equivalent, authenticated under the Acts of Congress under 28  
1192 U.S.C.A. Section 1739, and affidavit releases the debtor or person  
1193 having possession of the personal property to the same extent as  
1194 if payment or delivery had been made to a local personal  
1195 representative.

1196 **SECTION 50.** The following shall be codified as Section  
1197 91-7-507, Mississippi Code of 1972:

1198 91-7-507. Payment or delivery under Section 91-7-503 may not  
1199 be made if a resident creditor of the nonresident decedent has  
1200 notified the debtor of the nonresident decedent or the person  
1201 having possession of the personal property belonging to the  
1202 nonresident decedent that the debt should not be paid nor the  
1203 property delivered to the domiciliary foreign personal  
1204 representative.

1205 **SECTION 51.** The following shall be codified as Section  
1206 91-7-509, Mississippi Code of 1972:

1207 91-7-509. If no local administration or application or  
1208 petition therefor is pending in this state, a domiciliary foreign



1209 personal representative may file with a court in this state in a  
1210 county in which property belonging to the decedent is located,  
1211 authenticated copies of his appointment, including the admitted  
1212 will and letters testamentary or letters of administration or  
1213 substantial equivalent, authenticated under the Acts of Congress  
1214 under 28 U.S.C.A. Section 1739, and any official bond he has  
1215 given. A domiciliary foreign personal representative is subject  
1216 to the estate administration requirements and obligations set  
1217 forth in Title 91, Chapter 7, Mississippi Code of 1972.

1218 **SECTION 52.** The following shall be codified as Section  
1219 91-7-511, Mississippi Code of 1972:

1220 91-7-511. A domiciliary foreign personal representative who  
1221 has complied with Section 91-7-509 may exercise as to assets in  
1222 this state all powers of a local personal representative, and may  
1223 maintain actions and proceedings in this state subject to any  
1224 conditions imposed upon nonresident parties generally.

1225 **SECTION 53.** The following shall be codified as Section  
1226 91-7-513, Mississippi Code of 1972:

1227 91-7-513. The power of a domiciliary foreign personal  
1228 representative under Section 91-7-503 or Section 91-7-511 shall be  
1229 exercised only if there is no administration or application  
1230 therefor pending in this state. An application or petition for  
1231 local administration of the estate terminates the power of the  
1232 foreign personal representative to act under Section 91-7-509, but  
1233 the local court may allow the foreign personal representative to





1234 exercise limited powers to preserve the estate. A person who,  
1235 before receiving actual notice of a pending local administration,  
1236 has changed his position in reliance upon the powers of a foreign  
1237 personal representative shall not be prejudiced by reason of the  
1238 application or petition for, or grant of, local administration.  
1239 The local personal representative is subject to all duties and  
1240 obligations which have accrued by virtue of the exercise of the  
1241 powers by the foreign personal representative and may be  
1242 substituted for him in any action or proceedings in this state.

1243 **SECTION 54.** The following shall be codified as Section  
1244 91-7-515, Mississippi Code of 1972:

1245 91-7-515. In respect to a nonresident decedent, the  
1246 provisions of this chapter govern:

1247 (a) Proceedings, if any, in a court of this state for  
1248 probate of the will, appointment, removal, supervision, and  
1249 discharge of the local personal representative, and any other  
1250 order concerning the estate; and

1251 (b) The status, powers, duties and liabilities of any  
1252 local personal representative and the rights of claimants,  
1253 purchasers, distributees and others in regard to a local  
1254 administration.

1255 **SECTION 55.** The following shall be codified as Section  
1256 91-7-517, Mississippi Code of 1972:

1257 91-7-517. A foreign personal representative submits  
1258 personally to the jurisdiction of the courts of this state in any



1259 proceeding relating to the estate by: (a) filing authenticated  
1260 copies of his appointment as provided in Section 91-7-509; or (b)  
1261 receiving payment of money or taking delivery of personal property  
1262 under Section 91-7-503; or (c) doing any act as a personal  
1263 representative in this state that would have given the state  
1264 jurisdiction over him as an individual. Jurisdiction under  
1265 paragraph (a) is limited to the money or value of personal  
1266 property collected.

1267         **SECTION 56.** The following shall be codified as Section  
1268 91-7-519, Mississippi Code of 1972:

1269         91-7-519. In addition to jurisdiction conferred by Section  
1270 91-7-515, a foreign personal representative is subject to the  
1271 jurisdiction of the courts of this state to the same extent that  
1272 his decedent was subject to jurisdiction immediately before death.

1273         **SECTION 57.** The following shall be codified as Section  
1274 91-7-521, Mississippi Code of 1972:

1275         91-7-521. (1) Service of process may be made upon the  
1276 foreign personal representative by registered or certified mail,  
1277 addressed to his last reasonably ascertainable address, requesting  
1278 a return receipt signed by addressee only. Notice by ordinary  
1279 first-class mail is sufficient if registered or certified mail  
1280 service to the addressee is unavailable. Service may be made upon  
1281 a foreign personal representative in the manner in which service  
1282 could have been made under other laws of this state on either the  
1283 foreign personal representative or his decedent immediately before



1284 death.

1285 (2) If service is made upon a foreign personal  
1286 representative as provided in subsection (1), he shall be allowed  
1287 at least thirty (30) days within which to appear or respond.

1288 **SECTION 58.** The following shall be codified as Section  
1289 91-7-523, Mississippi Code of 1972:

1290 91-7-523. An adjudication rendered in any jurisdiction in  
1291 favor of or against any foreign personal representative of the  
1292 estate is as binding on the local personal representative as if he  
1293 were a party to the adjudication.

1294 **SECTION 59.** The following shall be codified as Section  
1295 91-8-501, Mississippi Code of 1972:

1296 91-8-501. **Application of Article 5; rights of beneficiary's**  
1297 **creditor or assignee.** This Article 5 applies to a creditor's or  
1298 assignee's claims and ability to reach mandatory, support and  
1299 discretionary interests regardless of whether such interests are  
1300 subject to a spendthrift provision. To the extent not otherwise  
1301 prohibited by this Article 5, the court may authorize a creditor  
1302 or assignee of the beneficiary to reach the beneficiary's  
1303 distribution interest by attachment of present or future  
1304 distributions to or for the benefit of the beneficiary or other  
1305 means. The court may limit the award to such relief as is  
1306 appropriate under the circumstances.

1307 **SECTION 60.** The following shall be codified as Section  
1308 91-8-502, Mississippi Code of 1972:



1309           91-8-502.   **Spendthrift provision.**   (a) Except as provided in  
1310 Section 91-8-505, if the trust instrument provides that a  
1311 beneficiary's interest in a trust is not subject to voluntary or  
1312 involuntary transfer, the beneficiary's interest in the trust may  
1313 not be transferred and is not subject to the enforcement of a  
1314 money judgment until paid to the beneficiary.

1315           (b) A term of a trust providing that the interest of a  
1316 beneficiary is held subject to a "spendthrift trust," or words of  
1317 similar import, is sufficient to restrain both voluntary and  
1318 involuntary transfer of the beneficiary's interest.

1319           (c) A spendthrift provision applies to all beneficial  
1320 interests, including distribution interests whether with respect  
1321 to income or principal or both, and remainder interests.

1322           (d) A beneficiary may not transfer an interest in a trust in  
1323 violation of a valid spendthrift provision, and a creditor or  
1324 assignee of the beneficiary may not reach the interest or a  
1325 present, future or prospective distribution by the trustee before  
1326 its receipt by the beneficiary. Similarly, a creditor or assignee  
1327 of the beneficiary may not force a distribution from the trust.  
1328 This subsection (4) remains applicable regardless of the  
1329 beneficiary's potential right to force a distribution under  
1330 Section 91-8-814.

1331           (e) Notwithstanding any other provision of this section to  
1332 the contrary or whether a beneficiary has an outstanding creditor,  
1333 a trustee, cotrustee, or other fiduciary of a trust subject to a



1334 spendthrift provision may directly pay any expense on behalf of  
1335 the beneficiary and may exhaust the income and principal of the  
1336 trust for the benefit of the beneficiary. A trustee, cotrustee or  
1337 other fiduciary is not liable to any creditor for paying the  
1338 expenses of a beneficiary under a trust subject to a spendthrift  
1339 provision. This subsection (e) remains applicable whether the  
1340 beneficiary for whom the direct payment was made held a mandatory,  
1341 support, discretionary or remainder interest.

1342         **SECTION 61.** The following shall be codified as Section  
1343 91-8-503, Mississippi Code of 1972:

1344         91-8-503. **Discretionary interests; effect thereof.** (a) A  
1345 discretionary interest is neither a property interest nor an  
1346 enforceable right; it is a mere expectancy.

1347         (b) Relative to a discretionary interest, whether or not a  
1348 trust contains a spendthrift provision:

1349                 (1) A creditor or assignee cannot force or otherwise  
1350 reach a distribution with regard to a discretionary interest;

1351                 (2) A creditor or assignee cannot require a trustee,  
1352 cotrustee or other fiduciary to exercise the trustee's,  
1353 cotrustee's or other fiduciary's discretion to make a distribution  
1354 with regard to a discretionary interest;

1355                 (3) Whether or not a beneficiary has any outstanding  
1356 creditors or assignees, a trustee, cotrustee or other fiduciary of  
1357 a discretionary interest may directly pay any expense on behalf of



1358 the beneficiary and may exhaust the income and principal of the  
1359 trust for the benefit of the beneficiary;

1360 (4) A trustee, cotrustee or other fiduciary is not  
1361 liable to any creditor or assignee for paying the expenses of a  
1362 beneficiary of a discretionary interest;

1363 (5) (A) Whether or not a beneficiary holding a  
1364 discretionary interest is also a trustee, cotrustee or other  
1365 fiduciary, subsections (b)(1) through (4) remain applicable if:

1366 (i) The beneficiary-fiduciary does not have  
1367 the discretion to make or participate in making distributions to  
1368 such beneficiary-fiduciary;

1369 (ii) The beneficiary-fiduciary's discretion  
1370 to make or participate in making distributions to such  
1371 beneficiary-fiduciary is limited by an ascertainable standard; or

1372 (iii) The beneficiary-fiduciary's discretion  
1373 to make or participate in making distributions to such  
1374 beneficiary-fiduciary is exercisable only with the consent of a  
1375 cotrustee or another person holding an adverse interest.

1376 (B) A creditor or assignee may compel or otherwise  
1377 reach a distribution only to the extent the creditor or assignee  
1378 may compel or otherwise reach a distribution if the beneficiary  
1379 was not acting as a trustee, cotrustee or other fiduciary.

1380 **SECTION 62.** The following shall be codified as Section  
1381 91-8-504, Mississippi Code of 1972:



1382           91-8-504.   **Creditors' claims against settlor.**   (a) Whether  
1383 or not the terms of a trust contain a spendthrift provision, the  
1384 following rules apply:

1385           (1) During the lifetime of the settlor, the property of  
1386 a revocable trust is subject to claims of the settlor's creditors.

1387           (2) Except as provided in the Mississippi Qualified  
1388 Disposition in Trust Act and subsections (a) (3) through (5)  
1389 regarding an irrevocable special needs trust, a creditor or  
1390 assignee of the settlor of an irrevocable trust may reach the  
1391 maximum amount that can be distributed to or for the settlor's  
1392 benefit. If a trust has more than one (1) settlor, the amount the  
1393 creditor or assignee of a particular settlor may reach may not  
1394 exceed the settlor's interest in the portion of the trust  
1395 attributable to that settlor's contribution.

1396           (3) For the purposes of this section, "irrevocable  
1397 special needs trust" means an irrevocable trust established for  
1398 the benefit of one or more disabled persons, which includes, but  
1399 is not limited to, an individual who is disabled as defined in 42  
1400 U.S.C. Section 1382c(a), as well as an individual who is disabled  
1401 as defined in any similar federal, state or other jurisdictional  
1402 law or regulation, or has a condition that is substantially  
1403 equivalent to one that qualifies the person as disabled under such  
1404 a provision, even if not officially found to be disabled by a  
1405 governmental body, if one (1) of the purposes of the trust,  
1406 expressed in the trust instrument or implied from the trust



1407 instrument, is to allow the disabled person to qualify or continue  
1408 to qualify for public, charitable or private benefits that might  
1409 otherwise be available to the disabled person. The existence of  
1410 one or more nondisabled remainder beneficiaries of the trust does  
1411 not disqualify it as an irrevocable special needs trust for the  
1412 purposes of this section.

1413 (4) A creditor or assignee of the settlor of an  
1414 irrevocable special needs trust, as defined in subsection (a)(3),  
1415 may not reach or compel distributions from the special needs  
1416 trust, to or for the benefit of the settlor of the special needs  
1417 trust, or otherwise, whether or not the irrevocable special needs  
1418 trust complies with, and irrespective of the requirements of, the  
1419 Mississippi Qualified Disposition in Trust Act.

1420 (5) Notwithstanding any law to the contrary, neither a  
1421 creditor nor any other person shall have any claim or cause of  
1422 action against the trustee or other fiduciary, or an advisor of an  
1423 irrevocable special needs trust. For purposes of this subsection  
1424 (a)(5), an advisor of an irrevocable special needs trust includes  
1425 any person involved in the counseling, drafting, preparation,  
1426 execution or funding of an irrevocable special needs trust.

1427 (6) After the death of a settlor, and subject to the  
1428 settlor's right to direct the source from which liabilities will  
1429 be paid, the property of a trust that was revocable immediately  
1430 preceding the settlor's death is subject to claims of the  
1431 settlor's creditors, costs of administration of the settlor's





1432 estate, and the expenses of the settlor's funeral and disposal of  
1433 remains subject to the following:

1434 (A) With respect to claims, expenses, and taxes in  
1435 connection with the settlement of the settlor's estate, any claim  
1436 of a creditor that would be barred against the fiduciary of a  
1437 settlor's estate, the estate of the settlor, or any creditor or  
1438 beneficiary of the settlor's estate shall be barred against the  
1439 trust property of a trust that was revocable at the settlor's  
1440 death, the trustee of the revocable trust, and the creditors and  
1441 beneficiaries of the trust.

1442 (B) Unless a personal representative of the  
1443 settlor's estate has been appointed or an application or petition  
1444 for appointment of a personal representative of the settlor's  
1445 estate is pending, the trustee at any time may give notice to any  
1446 person the trustee has reason to believe may have a claim against  
1447 the settlor at death, at the claimant's last known address. The  
1448 notice shall contain the name and address of the trustee to whom  
1449 the claim must be presented and provide information that failure  
1450 to present the claim to the trustee within ninety (90) days of the  
1451 date of the notice will forever bar the claim. If the person  
1452 fails to present the claim in writing within ninety (90) days from  
1453 the date of the notice, then the person is forever barred from  
1454 asserting or recovering on the claim from the trustee, the trust  
1455 property and the creditors and beneficiaries of the trust. A  
1456 person who presents a claim on or before the date specified in the



1457 notice may not later increase the claim following the expiration  
1458 of the ninety-day period.

1459 (C) Unless a personal representative of the  
1460 settlor's estate has been appointed or an application or petition  
1461 for appointment of a personal representative of the settlor's  
1462 estate is pending, a trustee may also publish in some newspaper in  
1463 the county of the decedent's last residence a notice requiring all  
1464 persons having unknown claims against the settlor to present their  
1465 claims to the trustee, which notice shall state that failure to  
1466 present the claim to the trustee within ninety (90) days of the  
1467 date after the first publication of the notice will forever bar  
1468 the claim. The notice must be published for three (3) consecutive  
1469 weeks, and proof of publication must be maintained with the books  
1470 and records of the trust. If a person fails to present a claim in  
1471 writing within ninety (90) days from the date of first  
1472 publication, that person shall be forever barred from asserting or  
1473 recovering on the claim from the trustee, the trust property and  
1474 the creditors and beneficiaries of the trust. A person who  
1475 presents a claim on or before ninety (90) days from first  
1476 publication may not later increase the claim following the  
1477 expiration of the ninety-day period.

1478 (D) In addition to subsections (a) (6) (B) and  
1479 (a) (6) (C), if a claim is not presented in writing to the personal  
1480 representative of the settlor's estate or to the trustee: (i)  
1481 within six (6) months from the date of the appointment of the



1482 initial personal representative of the settlor's estate; or (ii)  
1483 if no personal representative is appointed within six (6) months  
1484 from the settlor's date of death and a claim is not presented in  
1485 writing to the trustee within six (6) months from the settlor's  
1486 date of death, a trustee is not chargeable for any assets that the  
1487 trustee may pay or distribute in good faith in satisfaction of any  
1488 lawful claims, expenses, or taxes or to any beneficiary before the  
1489 claim was presented. A payment or distribution of assets by a  
1490 trustee is deemed to have been made in good faith unless the  
1491 creditor can prove that the trustee had actual knowledge of the  
1492 claim at the time of the payment or distribution. The six-month  
1493 period shall not be interrupted or affected by the death,  
1494 resignation, or removal of a trustee, except that the time during  
1495 which there is no trustee in office shall not be counted as part  
1496 of the period.

1497 (E) A claim presented to the trustee under  
1498 subsection (a) (6) (B) or (a) (6) (C) must contain substantially the  
1499 same information as required in Section 91-7-149.

1500 (F) The provisions of Section 91-7-261 detailing  
1501 the priority of payment of claims, expenses, and taxes from the  
1502 probate estate of a decedent apply to a revocable trust to the  
1503 extent the assets of the settlor's probate estate are inadequate  
1504 and the personal representative or creditor or taxing authority of  
1505 the settlor's estate has perfected its right to collect from the  
1506 settlor's revocable trust.



1507 (G) If a personal representative has been  
1508 appointed for the settlor's estate, assets of the trust shall  
1509 abate pari passu with assets of the settlor's estate. If no  
1510 personal representative has been appointed for the settlor's  
1511 estate, assets of the trust shall abate in the same order of  
1512 preference as would apply to a decedent's estate.

1513 (H) Nothing in this paragraph (6) obligates a  
1514 trustee to seek appointment of a personal representative of a  
1515 settlor's estate, and a trustee is not liable to any beneficiary  
1516 or other third party for failure to do so.

1517 (b) For purposes of this section during the period a power  
1518 of withdrawal may be exercised or upon the lapse, release, or  
1519 waiver of the power, the holder is treated as the settlor of the  
1520 trust only to the extent the value of the property affected by the  
1521 lapse, release, or waiver exceeds the greater of:

1522 (1) The amount specified in Section 2041(b)(2) or  
1523 2514(e) of the Internal Revenue Code of 1986 (26 U.S.C. Section  
1524 2041(b)(2) and Section 2514(e));

1525 (2) If the donor of the property subject to holder's  
1526 power of withdrawal is not married at the time of the transfer of  
1527 property to the trust, the amount specified in Section 2503(b) of  
1528 the Internal Revenue Code of 1986 (26 U.S.C. Section 2503(b)); or

1529 (3) If the donor of the property subject to holder's  
1530 power of withdrawal is married at the time of the transfer of  
1531 property to the trust, twice the amount specified in Section



1532 2503(b) of the Internal Revenue Code of 1986 (26 U.S.C. Section  
1533 2503(b)).

1534 (4) A power to withdraw is not considered to exceed the  
1535 greater of the amounts specified in subsection (b)(1) through (3)  
1536 if the amount subject to a withdrawal right granted to the holder  
1537 in any calendar year does not exceed the greater of such amounts  
1538 even if the total amount subject to the holder's power to withdraw  
1539 exceeds the greater of such amounts in any subsequent calendar  
1540 year.

1541 (5) Except to the extent provided in this subsection  
1542 (b), a person who is the holder of a power of withdrawal is not  
1543 considered a settlor of the trust by failing to exercise the power  
1544 of withdrawal, releasing the power of withdrawal, or waiving the  
1545 power of withdrawal.

1546 (c) For purposes of subsection (a)(2), the following are not  
1547 considered an amount that may be distributed to or for the  
1548 settlor's benefit:

1549 (1) The power of a trustee of an irrevocable trust,  
1550 whether arising under the trust agreement or any other provision  
1551 of law, to make a distribution to or for the benefit of a settlor  
1552 for the purpose of reimbursing the settlor in an amount equal to  
1553 any income taxes payable on any portion of the trust principal and  
1554 income that are includable in the settlor's personal income under  
1555 applicable law, as well as distributions made by the trustee under  
1556 such authority; and



1557           (2) The power of the settlor to exercise any of the  
1558 powers described in Section 675 of the Internal Revenue Code of  
1559 1986 (26 U.S.C. Section 675).

1560           (d) Property contributed to the following trusts is not  
1561 considered to have been contributed by the settlor, and a person  
1562 who would otherwise be treated as a settlor or deemed settlor of  
1563 the following trusts may not be treated as a settlor:

1564           (1) An irrevocable inter vivos marital trust if:

1565                   (A) The settlor is a beneficiary of the trust  
1566 after the death of the settlor's spouse; and

1567                   (B) The trust is treated as:

1568                           (i) Qualified terminable interest property  
1569 under Section 2523(f), Internal Revenue Code of 1986; or

1570                           (ii) A general power of appointment trust  
1571 under Section 2523(e), Internal Revenue Code of 1986;

1572           (2) An irrevocable inter vivos trust of which the  
1573 settlor's spouse is a beneficiary if the settlor is a beneficiary  
1574 of the trust after the death of the settlor's spouse; or

1575           (3) An irrevocable trust for the benefit of any person  
1576 to the extent that the property of the trust was subject to a  
1577 power of appointment in another person, whether the settlor's  
1578 interest was created by the lapse or exercise of such power.

1579           The effect of this subsection (d) shall be that the power of  
1580 a trustee, and any benefit resulting to the settlor, whether  
1581 arising under the trust agreement or any other provision of the



1582 law, to make a distribution to or for the benefit of a settlor or  
1583 to otherwise permit the settlor to use or benefit from trust  
1584 property following the death of the settlor's spouse, shall not be  
1585 considered an amount that may be distributed to or for the  
1586 settlor's benefit for purposes of subsection (1)(b).

1587 (e) A beneficiary is not considered to be a settlor, to have  
1588 made a voluntary or involuntary transfer of the beneficiary's  
1589 interest in the trust, or to have the power to make a voluntary or  
1590 involuntary transfer of the beneficiary's interest in the trust,  
1591 merely because the beneficiary holds, exercises, waives, releases,  
1592 or allows to lapse:

1593 (1) A presently exercisable power to:

1594 (A) Consume, invade, appropriate, or distribute  
1595 property to or for the benefit of the beneficiary, if the power  
1596 is:

1597 (i) Exercisable only on consent of another  
1598 person holding an interest adverse to the beneficiary's interest;  
1599 or

1600 (ii) Limited by an ascertainable standard,  
1601 including health, education, support, or maintenance of the  
1602 beneficiary; or

1603 (B) Appoint any property of the trust to or for  
1604 the benefit of a person other than the beneficiary, a creditor of  
1605 the beneficiary, the beneficiary's estate, or a creditor of the  
1606 beneficiary's estate;



1607                   (2) A testamentary power of appointment; or  
1608                   (3) A presently exercisable right described by  
1609 subsection (b).

1610           (f) For purposes of subsection (a) (2) and subsection (g), a  
1611 person who becomes a beneficiary of a trust due to the exercise of  
1612 a power of appointment by someone other than such person shall not  
1613 be considered a settlor of the trust.

1614           (g) (1) Notwithstanding Section 15-3-115, no person shall  
1615 bring an action with respect to a transfer of property to a  
1616 spendthrift trust if the person is a creditor when the transfer is  
1617 made, unless the action is commenced within the later of two (2)  
1618 years after the transfer is made or six (6) months after the  
1619 person discovers or reasonably should have discovered the  
1620 transfer; and

1621                   (2) If subsection (g) (1) applies:

1622                           (A) A person is deemed to have discovered the  
1623 existence of a transfer at the time any public record is made of  
1624 the transfer, including, but not limited to, a conveyance of real  
1625 property that is recorded in the office of the county register of  
1626 deeds of the county in which the property is located or the filing  
1627 of a financing statement Uniform Commercial Code, or the  
1628 equivalent recording or filing of either with the appropriate  
1629 person or official under the laws of a jurisdiction other than  
1630 this state;





1631 (B) A creditor cannot bring an action with respect  
1632 to a transfer of property to a spendthrift trust unless that  
1633 creditor proves by clear and convincing evidence that the  
1634 settlor's transfer to the trust was made with the intent to  
1635 defraud that specific creditor; and

1636 (i) Notwithstanding any law to the contrary,  
1637 a creditor or any other person does not have a claim or cause of  
1638 action against the trustee, other fiduciary, or an advisor of a  
1639 spendthrift trust if that claim or cause of action is based in any  
1640 way on any person making use of the benefits of this subsection  
1641 (g);

1642 (ii) For purposes of subsection (g) (2) (B), an  
1643 advisor of a spendthrift trust includes, but is not limited to,  
1644 any person involved in the counseling, drafting, preparation,  
1645 execution or funding of a spendthrift trust;

1646 (iii) For purposes of subsection  
1647 (g) (2) (B) (i), counseling, drafting, preparation, execution or  
1648 funding of a spendthrift trust includes the counseling, drafting,  
1649 preparation, execution and funding of a limited partnership, a  
1650 limited liability company or any other type of entity if interests  
1651 in the limited partnership, limited liability company or other  
1652 entity are subsequently transferred to a spendthrift trust;

1653 (3) Notwithstanding subsection (g) (2) (B), in the same  
1654 manner as provided other than by this section to trusts in  
1655 general, a beneficiary, settlor, cotrustee, trust advisor or trust



1656 protector retains the right to bring a claim against a trustee or  
1657 against another cotrustee, trust advisor, trust protector or any  
1658 of their predecessors; however, no such claim shall arise solely  
1659 because a person used, or attempted to use, the benefits of this  
1660 subsection (g);

1661 (4) If more than one (1) transfer of property is made  
1662 to a spendthrift trust, the subsequent transfer of property to the  
1663 spendthrift trust shall be disregarded for the purpose of  
1664 determining whether a person may bring an action under this  
1665 subsection (g) with respect to a prior transfer of property to the  
1666 spendthrift trust; any distribution to a beneficiary from the  
1667 spendthrift trust shall be deemed to have been made from the most  
1668 recent transfer made to the spendthrift trust;

1669 (5) With the exception of a claim brought under  
1670 subsection (g) (3), notwithstanding any other law, no action of any  
1671 kind, including, without limitation, an action to enforce a  
1672 judgment entered by a court or other body having adjudicative  
1673 authority, shall be brought at law or in equity against the  
1674 trustee, other fiduciary or advisor of a spendthrift trust if, as  
1675 of the date the action is brought, an action by a creditor with  
1676 respect to a transfer of property to the spendthrift trust would  
1677 be barred under this subsection (g); and

1678 (6) This subsection (g) shall not abridge the rights of  
1679 a creditor, to the extent otherwise provided by this section, to



1680 reach the maximum amount that can be distributed to or for the  
1681 settlor's benefit under a spendthrift trust.

1682           **SECTION 63.** The following shall be codified as Section  
1683 91-8-505, Mississippi Code of 1972:

1684           91-8-505.   **Distributions relative to support, mandatory and**  
1685 **certain remainder interests.** (a) Relative to a support interest,  
1686 whether or not a trust contains a spendthrift provision:

1687                   (1) Although a beneficiary of a support interest has  
1688 enforceable rights under Section 91-8-814, those rights do not  
1689 raise the beneficiary's support interest to the level of a  
1690 property interest;

1691                   (2) No creditor or assignee shall reach that support  
1692 interest until a distribution from the support interest is  
1693 actually made to the beneficiary;

1694                   (3) After all or a portion of a support interest is  
1695 distributed to the beneficiary, no portion of the distribution  
1696 made from the support interest shall be reached by a creditor or  
1697 assignee of the beneficiary except to the extent that the  
1698 distribution made from the support interest exceeds the amount  
1699 necessary for the health, education, maintenance and support of  
1700 the beneficiary who received the distribution made from the  
1701 support interest;

1702                   (4) In the case of a beneficiary who holds a support  
1703 interest, the use or enjoyment of property belonging to the trust



1704 by that beneficiary shall not be transferred and shall not be  
1705 reached by creditors or assignees of that beneficiary;

1706 (5) Regardless of whether a beneficiary has any  
1707 outstanding creditors or assignees, a trustee or other fiduciary  
1708 of a support interest may directly pay any expense on behalf of  
1709 the beneficiary and may exhaust the income and principal of the  
1710 trust for the benefit of the beneficiary; and

1711 (6) A trustee or other fiduciary is not liable to any  
1712 creditor or assignee for paying the expenses of a beneficiary of a  
1713 support interest.

1714 (b) Relative to a mandatory interest, whether or not a trust  
1715 contains a spendthrift provision:

1716 (1) While a court may order a trustee or other  
1717 fiduciary to distribute a past-due mandatory distribution to its  
1718 beneficiary, no court shall order a trustee or other fiduciary to  
1719 distribute such past-due mandatory distribution directly to a  
1720 creditor or assignee;

1721 (2) Regardless of whether a beneficiary has any  
1722 outstanding creditors or assignees, a trustee or other fiduciary  
1723 of a mandatory interest may directly pay any expense on behalf of  
1724 the beneficiary and may exhaust the income and principal of the  
1725 trust for the benefit of the beneficiary;

1726 (3) A trustee or other fiduciary is not liable to any  
1727 creditor or assignee for paying the expenses of a beneficiary of a  
1728 mandatory interest.



1729 (c) Although a remainder interest may be an enforceable  
1730 right, where it is not absolutely certain based on the language of  
1731 the trust that the remainder interest will be distributed within  
1732 one (1) year, it shall not be classified as a property interest.  
1733 This subsection (c) does not affect eligibility for any public  
1734 assistance program administered by the Department of Human  
1735 Services.

1736 **SECTION 64.** The following shall be codified as Section  
1737 91-8-506, Mississippi Code of 1972:

1738 91-8-506. **Personal obligations of trustee.** Trust property  
1739 is not subject to personal obligations of the trustee, even if the  
1740 trustee becomes insolvent or bankrupt.

1741 **SECTION 65.** The following shall be codified as Section  
1742 91-8-507, Mississippi Code of 1972:

1743 91-8-507. **Removal or replacement power over trustee or other**  
1744 **fiduciary not reachable by holder's creditors; interests of**  
1745 **beneficiary who is also a trustee or other fiduciary not**  
1746 **reachable.** (a) A creditor or assignee of a beneficiary does not  
1747 have the power to reach an interest of a beneficiary or any other  
1748 person who holds an unconditional or conditional removal or  
1749 replacement power over a trustee or other fiduciary. Such power  
1750 over a trustee or other fiduciary is personal to the holder and  
1751 shall not be exercised by the holder's creditors. No court shall  
1752 direct a holder to exercise the power.

1753 (b) Subject to Section 91-8-504(b) (3):



1754 (1) A creditor or assignee of a beneficiary may not  
1755 reach an interest of a beneficiary who is also a trustee,  
1756 cotrustee or other fiduciary, or otherwise compel a distribution  
1757 because the beneficiary is then serving as a trustee, cotrustee or  
1758 other fiduciary; and

1759 (2) A court may not foreclose against a beneficiary's  
1760 interest described in subsection (a).

1761 **SECTION 66.** The following shall be codified as Section  
1762 91-8-508, Mississippi Code of 1972:

1763 91-8-508. **Judicial foreclosure of beneficial interests,**  
1764 **powers of appointment, and reserved powers prohibited; certain**  
1765 **reaches prohibited.** Regardless of whether or not a trust contains  
1766 a spendthrift provision:

1767 (1) No beneficial interest, power of appointment, or  
1768 reserved power in a trust shall be judicially foreclosed;

1769 (2) No creditor or assignee shall reach a power of  
1770 appointment or a remainder interest by the trustee before its  
1771 receipt by the beneficiary and a creditor or assignee must wait  
1772 until any funds are distributed relative to the power of  
1773 appointment or remainder interest before the creditor or assignee  
1774 may reach such funds; and

1775 (3) A power of appointment is not a property interest.

1776 **SECTION 67.** The following shall be codified as Section  
1777 89-22-1, Mississippi Code of 1972:



1778           89-22-1.   **Short title.**   This chapter may be cited as the  
1779 "Mississippi Uniform Disclaimer of Property Interests Act  
1780 (2002/2010)."

1781           **SECTION 68.**   The following shall be codified as Section  
1782 89-22-3, Mississippi Code of 1972:

1783           89-22-3.   **Definitions.**   In this chapter:

1784                   (1)   "Disclaimant" means the person to whom a disclaimed  
1785 interest or power would have passed had the disclaimer not been  
1786 made.

1787                   (2)   "Disclaimed interest" means the interest that would  
1788 have passed to the disclaimant had the disclaimer not been made.

1789                   (3)   "Disclaimer" means the refusal to accept an  
1790 interest in or power over property.

1791                   (4)   "Fiduciary" means a personal representative,  
1792 trustee, agent acting under a power of attorney, or other person  
1793 authorized to act as a fiduciary with respect to the property of  
1794 another person.

1795                   (5)   "Jointly held property" means property held in the  
1796 name of two (2) or more persons under an arrangement in which all  
1797 holders have concurrent interests and under which the  
1798 last-surviving holder is entitled to the whole of the property.  
1799 Jointly held property does not include property held as tenants by  
1800 the entirety.

1801                   (6)   "Person" means an individual, corporation, business  
1802 trust, estate, trust, partnership, limited liability company,



1803 association, joint venture, government, governmental subdivision,  
1804 agency, or instrumentality, public corporation, or any other legal  
1805 or commercial entity.

1806 (7) "State" means a state of the United States, the  
1807 District of Columbia, Puerto Rico, the United States Virgin  
1808 Islands, or any territory or insular possession subject to the  
1809 jurisdiction of the United States. The term includes an Indian  
1810 tribe or band or an Alaskan native village that is recognized by  
1811 federal law or formally acknowledged by a state.

1812 (8) "Trust" means:

1813 (A) An express trust, charitable or noncharitable,  
1814 with additions thereto, whenever and however created; and

1815 (B) A trust created under a statute, judgment, or  
1816 decree that requires the trust to be administered in the manner of  
1817 an express trust.

1818 **SECTION 69.** The following shall be codified as Section  
1819 89-22-5, Mississippi Code of 1972:

1820 89-22-5. **Scope.** This chapter applies to disclaimers of any  
1821 interest in or power over property, whenever created.

1822 **SECTION 70.** The following shall be codified as Section  
1823 89-22-7, Mississippi Code of 1972:

1824 89-22-7 **Chapter supplemented by other law.** (a) Unless  
1825 displaced by a provision of this chapter, the principles of law  
1826 and equity supplement this chapter.





1827 (b) This chapter does not limit any right of a person to  
1828 waive, release, disclaim, or renounce an interest in or power over  
1829 property under a law other than this chapter.

1830 **SECTION 71.** The following shall be codified as Section  
1831 89-22-9, Mississippi Code of 1972:

1832 89-22-9 **Power to disclaim; general requirements; when**  
1833 **irrevocable.** (a) A person may disclaim, in whole or part, any  
1834 interest in or power over property, including a power of  
1835 appointment. A person may disclaim the interest or power even if  
1836 its creator imposed a spendthrift provision or similar restriction  
1837 on transfer or a restriction or limitation on the right to  
1838 disclaim.

1839 (b) Except to the extent a fiduciary's right to disclaim is  
1840 expressly restricted or limited by another statute of this state  
1841 or by the instrument creating the fiduciary relationship, a  
1842 fiduciary may disclaim, in whole or part, any interest in or power  
1843 over property, including a power of appointment, whether acting in  
1844 a personal or representative capacity. A fiduciary may disclaim  
1845 the interest or power even if its creator imposed a spendthrift  
1846 provision or similar restriction on transfer or a restriction or  
1847 limitation on the right to disclaim, or an instrument other than  
1848 the instrument that created the fiduciary relationship imposed a  
1849 restriction or limitation on the right to disclaim.

1850 (c) To the extent there is no material conflict of interest,  
1851 a parent, as defined in Section 93-15-103(h), can disclaim on



1852 behalf of the parent's minor or incapacitated child, if a  
1853 conservator or guardian has not been appointed for the child.

1854 (d) To be effective, a disclaimer must be in a writing or  
1855 other record, declare the disclaimer, describe the interest or  
1856 power disclaimed, be signed by the person making the disclaimer,  
1857 and be delivered or filed in the manner provided in Section  
1858 89-22-25. In this subsection "record" means information that is  
1859 inscribed on a tangible medium or that is stored in an electronic  
1860 or other medium and is retrievable in perceivable form.

1861 (e) A partial disclaimer may be expressed as a fraction,  
1862 percentage, monetary amount, term of years, limitation of a power,  
1863 or any other interest or estate in the property.

1864 (f) A disclaimer becomes irrevocable when it is delivered or  
1865 filed under Section 89-22-25 or when it becomes effective as  
1866 provided in Sections 89-22-11 through 89-22-23 of this chapter,  
1867 whichever occurs later.

1868 (g) A disclaimer made under this chapter is not a transfer,  
1869 assignment, or release.

1870 (h) A person obligated to distribute an interest disclaimed  
1871 under this chapter is not liable to any person for distributing  
1872 the interest as if the interest were not disclaimed unless the  
1873 person obligated to distribute the interest receives a copy of the  
1874 disclaimer before distributing the interest.

1875 **SECTION 72.** The following shall be codified as Section  
1876 89-22-11, Mississippi Code of 1972:



1877           89-22-11.   **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 89-22-13,  
1886 89-22-15 or 89-22-17, the following rules apply to a disclaimer of  
1887 an interest in 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 73.** The following shall be codified as Section  
1931 89-22-13, Mississippi Code of 1972:

1932           89-22-13.   **Disclaimer of rights of survivorship in jointly**

1933 **held property.** (a) Upon the death of a holder of jointly held  
1934 property, a surviving holder may disclaim, in whole or in part,  
1935 the incremental portion of the jointly held property devolving to  
1936 the surviving holder by right of survivorship.

1937           (b) A disclaimer under subsection (a) of this section takes  
1938 effect as of the death of the holder of jointly held property to  
1939 whose death the disclaimer relates.

1940           (c) If a disclaimer is made under subsection (a) of this  
1941 section with only one (1) holder surviving the death of the holder  
1942 to whose death the disclaimer relates, the incremental portion  
1943 disclaimed shall, as a consequence of the disclaimer, pass as part  
1944 of the estate of the deceased holder.

1945           (d) If a disclaimer is made under subsection (a) of this  
1946 section with two (2) or more of the holders surviving the death of  
1947 the holder to whose death the disclaimer relates:

1948           (1) The disclaimer does not sever the joint tenancy  
1949 with respect to the jointly held property as among the surviving  
1950 holders;



1951                   (2) The incremental portion disclaimed, as a  
1952 consequence of a disclaimer, devolves to the surviving holders in  
1953 proportion to their respective interests in the jointly held  
1954 property excluding the disclaimant and any other surviving holder  
1955 who disclaims to the extent of his, her or its disclaimer of the  
1956 incremental portion;

1957                   (3) An incremental portion devolving to a surviving  
1958 holder, as a consequence of one or more disclaimers, may be  
1959 disclaimed by the surviving holder;

1960                   (4) To the extent that all of the surviving holders  
1961 disclaim an incremental portion devolving to them, the portion  
1962 shall instead pass as part of the estate of the deceased holder;  
1963 and

1964                   (5) The proportion of each of the surviving holders  
1965 with respect to the jointly held property shall be adjusted to  
1966 take into account the devolution of the incremental portion to the  
1967 extent that the portion is disclaimed.

1968                   **SECTION 74.** The following shall be codified as Section  
1969 89-22-15, Mississippi Code of 1972:

1970                   89-22-15. **Disclaimer of property held as tenants by the**  
1971 **entirety.** (a) The survivorship interest in property held as a  
1972 tenancy by the entirety to which the survivor succeeds by  
1973 operation of law upon the death of the cotenant may be disclaimed  
1974 as provided in this chapter. For purposes of this chapter only,  
1975 the deceased tenant's interest in property held as a tenancy by



1976 the entirety shall be deemed to be an undivided one-half (1/2)  
1977 interest.

1978 (b) A disclaimer under subsection (a) takes effect as of the  
1979 death of the deceased tenant to whose death the disclaimer  
1980 relates.

1981 (c) The survivorship interest in property held as a tenancy  
1982 by the entirety disclaimed by the surviving tenant passes as if  
1983 the disclaimant had predeceased the tenant to whose death the  
1984 disclaimer relates.

1985 **SECTION 75.** The following shall be codified as Section  
1986 89-22-17, Mississippi Code of 1972:

1987 89-22-17. **Disclaimer of interest by trustee.** (a) If a  
1988 trustee disclaims an interest in property that otherwise would  
1989 have become trust property:

1990 (1) The interest does not become trust property;

1991 (2) The disclaimer:

1992 (A) Takes effect as of the time the trust became  
1993 irrevocable; and

1994 (B) Relates back for all purposes to the time the  
1995 trust became irrevocable; and

1996 (3) The disclaimed interest is not subject to the  
1997 claims of any creditor of the trustee, the trust, or any trust  
1998 beneficiary.

1999 (b) If the instrument creating the disclaimed interest  
2000 contains a provision that provides for the disposition of the



2001 interest if the interest were to be disclaimed, the disclaimed  
2002 interest passes according to that provision.

2003 (c) If the instrument creating the disclaimed interest does  
2004 not contain a provision described by subsection (b), the  
2005 disclaimed interest passes as if:

2006 (1) All of the current beneficiaries, presumptive  
2007 remainder beneficiaries, and contingent beneficiaries of the trust  
2008 affected by the disclaimer who are individuals who died before the  
2009 trust became irrevocable; and

2010 (2) All beneficiaries of the trust affected by the  
2011 disclaimer who are not individuals ceased to exist without  
2012 successor organizations and without substitution of beneficiaries  
2013 under the cy pres doctrine before the trust became irrevocable.

2014 (d) Subsection (c) applies only for purposes of determining  
2015 the disposition of an interest in property disclaimed by a trustee  
2016 that otherwise would have become trust property and applies only  
2017 with respect to the trust affected by the disclaimer. Subsection  
2018 (c) does not apply with respect to other trusts governed by the  
2019 instrument and does not apply for other purposes under the  
2020 instrument or under the laws of intestacy.

2021 **SECTION 76.** The following shall be codified as Section  
2022 89-22-19, Mississippi Code of 1972:

2023 89-22-19. **Disclaimer of power of appointment or other power**  
2024 **not held in fiduciary capacity.** If a holder disclaims a power of





2025 appointment or other power not held in a fiduciary capacity, the  
2026 following rules apply:

2027 (1) If the holder has not exercised the power, the  
2028 disclaimer takes effect as of the time the instrument creating the  
2029 power becomes irrevocable.

2030 (2) If the holder has exercised the power and the  
2031 disclaimer is of a power other than a presently exercisable  
2032 general power of appointment, the disclaimer takes effect  
2033 immediately after the last exercise of the power.

2034 (3) The instrument creating the power is construed as  
2035 if the power expired when the disclaimer became effective.

2036 **SECTION 77.** The following shall be codified as Section  
2037 89-22-21, Mississippi Code of 1972:

2038 89-22-21. **Disclaimer by appointee, object, or taker in**  
2039 **default of exercise of power of appointment.** (a) A disclaimer of  
2040 an interest in property by an appointee of a power of appointment  
2041 takes effect as of the time the instrument by which the holder  
2042 exercises the power becomes irrevocable.

2043 (b) A disclaimer of an interest in property by an object or  
2044 taker in default of an exercise of a power of appointment takes  
2045 effect as of the time the instrument creating the power becomes  
2046 irrevocable.

2047 **SECTION 78.** The following shall be codified as Section  
2048 89-22-23, Mississippi Code of 1972:



2049           89-22-23.   **Disclaimer of power held in fiduciary capacity.**

2050       (a)   If a fiduciary disclaims a power held in a fiduciary capacity  
2051       which has not been exercised, the disclaimer takes effect as of  
2052       the time the instrument creating the power becomes irrevocable.

2053           (b)   If a fiduciary disclaims a power held in a fiduciary  
2054       capacity which has been exercised, the disclaimer takes effect  
2055       immediately after the last exercise of the power.

2056           (c)   A disclaimer under this section is effective as to  
2057       another fiduciary if the disclaimer so provides and the fiduciary  
2058       disclaiming has the authority to bind the estate, trust, or other  
2059       person for whom the fiduciary is acting.

2060           **SECTION 79.**   The following shall be codified as Section  
2061       89-22-35, Mississippi Code of 1972:

2062           89-22-35.   **Delivery or filing.**   (a)   In this section,  
2063       "beneficiary designation" means an instrument, other than an  
2064       instrument creating a trust, naming the beneficiary of:

- 2065                   (1)   An annuity or insurance policy;
- 2066                   (2)   An account with a designation for payment on death;
- 2067                   (3)   A security registered in beneficiary form;
- 2068                   (4)   A pension, profit-sharing, retirement, or other  
2069       employment-related benefit plan; or
- 2070                   (5)   Any other nonprobate transfer at death.

2071           (b)   Subject to subsections (c) through (l), delivery of a  
2072       disclaimer may be effected by personal delivery, first-class mail,  
2073       or any other method likely to result in its receipt.



2074 (c) In the case of an interest created under the law of  
2075 intestate succession or an interest created by will, other than an  
2076 interest in a testamentary trust:

2077 (1) A disclaimer must be delivered to the personal  
2078 representative of the decedent's estate; or

2079 (2) If no personal representative is then serving, it  
2080 must be filed with a court having jurisdiction to appoint the  
2081 personal representative.

2082 (d) In the case of an interest in a testamentary trust:

2083 (1) A disclaimer must be delivered to the trustee then  
2084 serving, or if no trustee is then serving, to the personal  
2085 representative of the decedent's estate; or

2086 (2) If no personal representative is then serving, it  
2087 must be filed with a court having jurisdiction to enforce the  
2088 trust.

2089 (e) In the case of an interest in an inter vivos trust:

2090 (1) A disclaimer must be delivered to the trustee then  
2091 serving;

2092 (2) If no trustee is then serving, it must be filed  
2093 with a court having jurisdiction to enforce the trust; or

2094 (3) If the disclaimer is made before the time the  
2095 instrument creating the trust becomes irrevocable, it must be  
2096 delivered to the settlor of a revocable trust or the transferor of  
2097 the interest.



2098           (f) In the case of an interest created by a beneficiary  
2099 designation which is disclaimed before the designation becomes  
2100 irrevocable, the disclaimer must be delivered to the person making  
2101 the beneficiary designation or to such person's legal  
2102 representative.

2103           (g) In the case of an interest created by a beneficiary  
2104 designation which is disclaimed after the designation becomes  
2105 irrevocable, the disclaimer must be delivered to the person  
2106 obligated to distribute the interest.

2107           (h) In the case of a disclaimer by a surviving holder of  
2108 jointly held property or property held as tenants by the entirety,  
2109 the disclaimer must be delivered to the person to whom the  
2110 disclaimed interest passes.

2111           (i) In the case of a disclaimer by an object or taker in  
2112 default of exercise of a power of appointment at any time after  
2113 the power was created:

2114               (1) The disclaimer must be delivered to the holder of  
2115 the power or to the fiduciary acting under the instrument that  
2116 created the power; or

2117               (2) If no fiduciary is then serving, it must be filed  
2118 with a court having authority to appoint the fiduciary.

2119           (j) In the case of a disclaimer by an appointee of a  
2120 nonfiduciary power of appointment:



2121 (1) The disclaimer must be delivered to the holder, the  
2122 personal representative of the holder's estate or to the fiduciary  
2123 under the instrument that created the power; or

2124 (2) If no fiduciary is then serving, it must be filed  
2125 with a court having authority to appoint the fiduciary.

2126 (k) In the case of a disclaimer by a fiduciary of a power  
2127 over a trust or estate, the disclaimer must be delivered as  
2128 provided in subsection (c), (d), or (e), as if the power  
2129 disclaimed were an interest in property.

2130 (l) In the case of a disclaimer of a power by an agent, the  
2131 disclaimer must be delivered to the principal or the principal's  
2132 representative.

2133 **SECTION 80.** The following shall be codified as Section  
2134 89-22-27, Mississippi Code of 1972:

2135 89-22-27. **When disclaimer barred or limited.** (a) A  
2136 disclaimer is barred by a written waiver of the right to disclaim.

2137 (b) A disclaimer of an interest in property is barred if any  
2138 of the following events occur before the disclaimer becomes  
2139 effective:

2140 (1) The disclaimant accepts the interest sought to be  
2141 disclaimed;

2142 (2) The disclaimant voluntarily assigns, conveys,  
2143 encumbers, pledges, or transfers the interest sought to be  
2144 disclaimed or contracts to do so; or



2145           (3) A judicial sale of the interest sought to be  
2146 disclaimed occurs.

2147           (c) A disclaimer, in whole or part, of the future exercise  
2148 of a power held in a fiduciary capacity is not barred by its  
2149 previous exercise.

2150           (d) A disclaimer, in whole or part, of the future exercise  
2151 of a power not held in a fiduciary capacity is not barred by its  
2152 previous exercise unless the power is exercisable in favor of the  
2153 disclaimant.

2154           (e) A disclaimer is barred or limited if so provided by law  
2155 other than this chapter.

2156           (f) A disclaimer of a power over property which is barred by  
2157 this section is ineffective. A disclaimer of an interest in  
2158 property which is barred by this section takes effect as a  
2159 transfer of the interest disclaimed to the persons who would have  
2160 taken the interest under this chapter had the disclaimer not been  
2161 barred.

2162           **SECTION 81.** The following shall be codified as Section  
2163 89-22-29, Mississippi Code of 1972:

2164           89-22-29. **Tax-qualified disclaimer.** (a) Notwithstanding  
2165 any other provision of this chapter, if as a result of a  
2166 disclaimer or transfer, the disclaimed or transferred interest is  
2167 treated under the provisions of Title 26 of the United States  
2168 Code, as now or hereafter amended, or any successor statute  
2169 thereto, and the regulations promulgated thereunder, as never



2170 having been transferred to the disclaimant, then the disclaimer or  
2171 transfer is effective as a disclaimer under this chapter.

2172 (b) In order for a disclaimer made under the provisions of  
2173 this chapter to be effective as a tax-qualified disclaimer under  
2174 the provisions of Title 26 of the United States Code, the  
2175 disclaimer must satisfy the conditions of Title 26, Section 2518  
2176 of the United States Code, as now or hereafter amended, including  
2177 the requirement that the disclaimer be made generally within nine  
2178 (9) months from the day the interest being disclaimed was created.

2179 **SECTION 82.** The following shall be codified as Section  
2180 89-22-31, Mississippi Code of 1972:

2181 89-22-31. **Recording of disclaimer.** (a) A disclaimer of an  
2182 interest in or relating to real property does not provide  
2183 constructive notice to all persons unless the disclaimer contains  
2184 a legal description of the real property to which the disclaimer  
2185 relates and unless the disclaimer is filed for recording in the  
2186 office of the chancery clerk of the county or counties where the  
2187 real property is located.

2188 (b) An effective disclaimer meeting the requirements of  
2189 subsection (a) constitutes constructive notice to all persons from  
2190 and after the time of filing.

2191 (c) Failure to file, record, or register the disclaimer does  
2192 not affect its validity as between the disclaimant and persons to  
2193 whom the property interest or power passes by reason of the  
2194 disclaimer.



2195           **SECTION 83.** The following shall be codified as Section  
2196 89-22-33, Mississippi Code of 1972:

2197           89-22-33.   **Application to existing relationships.** Except as  
2198 otherwise provided in Section 89-22-27, an interest in or power  
2199 over property existing on the effective date of this chapter as to  
2200 which the time for delivering or filing a disclaimer under law  
2201 superseded by this chapter has not expired may be disclaimed after  
2202 the effective date of this chapter.

2203           **SECTION 84.** The following shall be codified as Section  
2204 89-22-29, Mississippi Code of 1972:

2205           89-22-29.   **Uniformity of application and construction.** In  
2206 applying and construing this uniform act, consideration must be  
2207 given to the need to promote uniformity of the law with respect to  
2208 its subject matter among states that enact it.

2209           **SECTION 85.** The following shall be codified as Section  
2210 89-22-31, Mississippi Code of 1972:

2211           89-22-31.   **Severability clause.** If any provision of this  
2212 chapter or its application to any person or circumstance is held  
2213 invalid, the invalidity does not affect other provisions or  
2214 applications of this chapter which can be given effect without the  
2215 invalid provision or application, and to this end the provisions  
2216 of this chapter are severable.

2217           **SECTION 86.** Section 91-8-105, Mississippi Code of 1972, is  
2218 amended as follows:





2219           91-8-105. (a) Except as otherwise provided in the terms of  
2220 the trust, this chapter governs the duties and powers of a trustee  
2221 or any other fiduciary under this chapter, relations among  
2222 trustees and such other fiduciaries, and the rights and interests  
2223 of a beneficiary. The terms of a trust may expand, restrict,  
2224 eliminate, or otherwise vary the duties and powers of a trustee,  
2225 any such other fiduciary, relations among any of them, and the  
2226 rights and interests of a beneficiary; however, nothing contained  
2227 in this subsection shall be construed to override or nullify the  
2228 provisions of subsection (b). The rule of statutory construction  
2229 that statutes in derogation of the common law are to be strictly  
2230 construed shall have no application to this section. Except as  
2231 restricted by subsection (b), pursuant to this section, courts  
2232 shall give maximum effect to the principal of freedom of  
2233 disposition and to the enforceability of trust instruments.

2234           (b) The terms of a trust prevail over any provision of this  
2235 chapter except:

2236                   (1) The requirements for creating a trust;

2237                   (2) The duty of a trustee to act in good faith in  
2238 accordance with the terms and purposes of the trust and the  
2239 interests of the beneficiaries;

2240                   (3) The requirement that a trust and its terms be for  
2241 the benefit of its beneficiaries as the interests of such  
2242 beneficiaries are defined under the terms of the trust, and that  
2243 the trust have a purpose that is lawful and possible to achieve;



2244 (4) The power of the court to modify or terminate a  
2245 trust under Sections 91-8-410 through 91-8-416;

2246 (5) The effect of a spendthrift provision and the  
2247 rights of certain creditors and assignees to reach a trust as  
2248 provided in \* \* \* Article 5 of the Uniform Trust Code codified as  
2249 Sections 91-8-501 through 91-8-508;

2250 (6) The power of the court under Section 91-8-702 to  
2251 require, dispense with, or modify or terminate a bond;

2252 (7) The power of the court under Section 91-8-708(b) to  
2253 adjust a trustee's compensation specified in the terms of the  
2254 trust which is unreasonably low or high;

2255 (8) Subject to subsection (d), the duty under Section  
2256 91-8-813(b) to notify beneficiaries of an irrevocable trust  
2257 (including anyone who holds a power of appointment) who have  
2258 attained twenty-five (25) years of age that the trust has been  
2259 established as set forth in that Section 91-8-813(b);

2260 (9) Subject to subsection (d), the duty under Section  
2261 91-8-813(a) (1) and (2) to keep the beneficiaries (including anyone  
2262 who holds a power of appointment) informed and to respond to the  
2263 request of a beneficiary of an irrevocable trust for trustee's  
2264 reports and other information reasonably related to the  
2265 administration of the trust;

2266 (10) The effect of an exculpatory term under Section  
2267 91-8-1008;



2268                   (11) The rights under Sections 91-8-1010 through  
2269 91-8-1013 of a person other than a trustee or beneficiary;  
2270                   (12) Periods of limitation for commencing a judicial  
2271 proceeding;  
2272                   (13) The power of the court to take such action and  
2273 exercise such jurisdiction as may be necessary in the interests of  
2274 justice; and  
2275                   (14) The subject-matter jurisdiction of the court and  
2276 venue for commencing a proceeding as provided in Sections 91-8-203  
2277 and 91-8-204.  
2278           (c) Any purpose enunciated as a material purpose of a trust  
2279 in that trust's trust instrument shall be treated as a material  
2280 purpose of that trust for all purposes of this chapter.  
2281           (d) Notwithstanding subsection (b) (8) and (9) of this  
2282 section, the duties of a trustee to give notice, information and  
2283 reports under Section 91-8-813(a) and (b) may be waived or  
2284 modified in the trust instrument or by the settlor of the trust,  
2285 or a trust protector or trust advisor that holds the power to so  
2286 direct, directs otherwise in a writing delivered to the trustee in  
2287 any of the following ways:  
2288                   (1) By waiving or modifying such duties as to all  
2289 qualified beneficiaries during the lifetime of the settlor or the  
2290 settlor's spouse;



2291 (2) By specifying a different age at which a  
2292 beneficiary or class of beneficiaries must be notified under  
2293 Section 91-8-813(b); or

2294 (3) With respect to one or more of the beneficiaries,  
2295 by designating a beneficiary surrogate to receive such notice,  
2296 information and reports who will act in good faith to protect the  
2297 interests of the beneficiary or beneficiaries.

2298 **SECTION 87.** Sections 27-10-1, 27-10-3, 27-10-5, 27-10-7,  
2299 27-10-9, 27-10-11, 27-10-13, 27-10-15, 27-10-17, 27-10-19,  
2300 27-10-21, 27-10-23 and 27-10-25, Mississippi Code of 1972, which  
2301 constitute the Uniform Estate Tax Apportionment Act, are repealed.

2302 **SECTION 88.** Sections 89-21-1, 89-21-3, 89-21-5, 89-21-7,  
2303 89-21-9, 89-21-11, 89-21-13, 89-21-15 and 89-21-17, Mississippi  
2304 Code of 1972, which constitute the Uniform Disclaimer of Property  
2305 Interests Act, are repealed.

2306 **SECTION 89.** Sections 91-9-501, 91-9-503, 91-9-505, 91-9-507,  
2307 91-9-509, 91-9-511, Mississippi Code of 1972, which constitute the  
2308 Family Trust Preservation Act of 1998, are repealed.

2309 **SECTION 90.** Section 91-7-259, Mississippi Code of 1972,  
2310 which provides for foreign fiduciaries and lawsuits and debts, is  
2311 repealed.

2312 **SECTION 91.** Sections 91-8-501 through 91-8-508, Mississippi  
2313 Code of 1972, constitute Article 5 of the Uniform Trust Code.

2314 **SECTION 92.** This act shall take effect and be in force from  
2315 and after July 1, 2020.  
2316

