

By: Senator(s) Doty, Jackson (11th)

To: Judiciary, Division A

COMMITTEE SUBSTITUTE
FOR
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
18 TRANSFER-ON-DEATH DEED DURING A TRANSFEROR'S LIFE; TO CREATE NEW
19 SECTION 91-27-25, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR THE
20 EFFECT OF SUBSEQUENT CONVEYANCE; TO CREATE NEW SECTION 91-27-27,
21 MISSISSIPPI CODE OF 1972, TO PROVIDE FOR THE EFFECT AT
22 TRANSFEROR'S DEATH; TO CREATE NEW SECTION 91-27-29, MISSISSIPPI
23 CODE OF 1972, TO PROVIDE FOR THE EFFECT OF LIENS, ENCUMBRANCES AND
24 CREDITORS' CLAIMS; TO CREATE NEW SECTION 91-27-31, MISSISSIPPI
25 CODE OF 1972, TO AUTHORIZE DISCLAIMER; TO CREATE NEW SECTION
26 91-27-33 AND 91-27-35, MISSISSIPPI CODE OF 1972, TO PROVIDE
27 OPTIONAL FORMS; TO CREATE NEW SECTION 91-27-37, MISSISSIPPI CODE
28 OF 1972, TO SPECIFY THE ACT'S RELATION TO ELECTRONIC SIGNATURES
29 UNDER THE GLOBAL AND NATIONAL COMMERCE ACT; TO CREATE NEW SECTION
30 91-29-1, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR REVOCATION OF
31 CERTAIN INSTRUMENTS EXECUTED BEFORE DIVORCE; TO CREATE NEW SECTION
32 91-29-3, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR TREATMENT OF A
33 DECEDENT'S FORMER SPOUSE; TO CREATE NEW SECTION 91-29-5,
34 MISSISSIPPI CODE OF 1972, TO ENACT DEFINITIONS; TO CREATE NEW



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



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

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

127 **SECTION 1.** The following shall be codified as Section
128 91-27-1, Mississippi Code of 1972:

129 91-27-1. **Short title.** Sections 1 through 19 of this act may
130 be cited as the Mississippi Real Property Transfer-On-Death Act.



131 **SECTION 2.** The following shall be codified as Section
132 91-27-3, Mississippi Code of 1972:

133 97-27-3. **Definitions.** (a) "Beneficiary" means a person who
134 receives real property under a transfer-on-death deed.

135 (b) "Designated beneficiary" means a person designated to
136 receive real property in a transfer-on-death deed.

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

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

147 (e) "Real property" means an interest in real property
148 located in this state.

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

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

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



156 **SECTION 3.** The following shall be codified as Section
157 91-27-5, Mississippi Code of 1972:

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

162 **SECTION 4.** The following shall be codified as Section
163 91-27-7, Mississippi Code of 1972:

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

167 **SECTION 5.** The following shall be codified as Section
168 91-27-9, Mississippi Code of 1972:

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

173 **SECTION 6.** The following shall be codified as Section
174 91-27-11, Mississippi Code of 1972:

175 97-27-11. **Transfer-on-death deed revocable.** A
176 transfer-on-death deed must be executed as set forth in Title 89,
177 Chapter 3, Mississippi Code of 1972, relating to necessary
178 acknowledgements, and need not be executed with the formalities of
179 a will.



180 **SECTION 7.** The following shall be codified as Section
181 91-27-13, Mississippi Code of 1972:

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

184 **SECTION 8.** The following shall be codified as Section
185 91-27-15, Mississippi Code of 1972:

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

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

193 **SECTION 9.** The following shall be codified as Section
194 91-27-17, Mississippi Code of 1972:

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

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

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



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

206 **SECTION 10.** The following shall be codified as Section
207 91-27-19, Mississippi Code of 1972:

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

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

212 (2) Consideration.

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:



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**
432 **marriage.** (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
786 for purposes of the tax;

787 (B) The value of any interest in property that,
788 for 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
791 estate 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
801 tax, all 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
811 property which terminates on a lapse of time or on the occurrence
812 or nonoccurrence of an event or which is subject to the exercise
813 of 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
820 property, fair market value as finally determined for purposes of
821 the estate tax that is to be apportioned, reduced by any
822 outstanding debt secured by the interest without reduction for
823 taxes paid or required to be paid or for any special valuation
824 adjustment.

825 **SECTION 35.** The following shall be codified as Section
826 91-25-5, Mississippi Code of 1972:

827 91-25-5. **Apportionment by will or other dispositive**

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

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

833 (2) Any portion of an estate tax not apportioned under
834 paragraph (1) must be apportioned in accordance with any provision
835 of a revocable trust of which the decedent was the settlor which
836 expressly and unambiguously directs the apportionment of an estate
837 tax. If conflicting apportionment provisions appear in two (2) or
838 more revocable trust instruments, the provision in the most
839 recently dated instrument prevails. For purposes of this
840 paragraph:



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

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

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

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

857 (1) If an apportionment provision directs that a person
858 receiving an interest in property under an instrument is to be
859 exonerated from the responsibility to pay an estate tax that would
860 otherwise be apportioned to the interest, the tax attributable to
861 the exonerated interest must be apportioned ratably among all the
862 other persons receiving interests in the apportionable estate that
863 are not exonerated from apportionment of the tax.

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



866 portion of which qualifies for a marital or charitable deduction,
867 the estate tax must first be apportioned ratably among the holders
868 of the portion that does not qualify for a marital or charitable
869 deduction and then apportioned ratably among the holders of the
870 deductible portion to the extent that the value of the
871 nondeductible portion is insufficient.

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

879 (4) If an apportionment provision directs that an
880 estate tax is to be apportioned to the holders of interests in
881 property in which one or more time-limited interests exist and a
882 charity has an interest that otherwise qualifies for an estate tax
883 charitable deduction, the tax must first be apportioned, to the
884 extent feasible, to interests in property that have not been
885 distributed to the persons entitled to receive the interests. No
886 tax shall be paid from a charitable remainder annuity trust or
887 charitable remainder unitrust described in Section 664 of the
888 Internal Revenue Code (26 U.S.C. Section 664) and created during
889 the decedent's life.



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

897 **SECTION 36.** The following shall be codified as Section
898 91-25-7, Mississippi Code of 1972:

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

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

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

910 (3) If property is included in the decedent's gross
911 estate because of Section 2044 of the Internal Revenue Code of
912 1986 or any similar estate tax provision, the difference between
913 the total estate tax for which the decedent's estate is liable and
914 the amount of estate tax for which the decedent's estate would



915 have been liable if the property had not been included in the
916 decedent's gross estate is apportioned ratably among the holders
917 of interests in the property. The balance of the tax, if any, is
918 apportioned ratably to each other person having an interest in the
919 apportionable estate.

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

925 **SECTION 37.** The following shall be codified as Section
926 91-25-9, Mississippi Code of 1972:

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

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

934 (2) A credit for state or foreign estate taxes inures
935 ratably to the benefit of all persons to which the estate tax is
936 apportioned, except that the amount of a credit for a state or
937 foreign tax paid by a beneficiary of the property on which the
938 state or foreign tax was imposed, directly or by a charge against
939 the property, inures to the benefit of the beneficiary.



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

949 **SECTION 38.** The following shall be codified as Section
950 91-25-11, Mississippi Code of 1972:

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

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

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

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



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

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

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

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

983 (d) A court having jurisdiction to determine the
984 apportionment of an estate tax may require a beneficiary of an
985 interest in insulated property to pay all or part of the estate
986 tax otherwise apportioned to the interest if the court finds that
987 it would be substantially more equitable for that beneficiary to
988 bear the tax liability personally than for that part of the tax to
989 be advanced by uninsulated holders.



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

997 (f) Upon payment by an uninsured holder of estate tax
998 required to be advanced, a court may require the beneficiary of an
999 interest in insulated property to provide a bond or other
1000 security, including a recordable lien on the property of the
1001 beneficiary, for repayment of the advanced tax.

1002 **SECTION 39.** The following shall be codified as Section
1003 91-25-13, Mississippi Code of 1972:

1004 91-25-13. **Apportionment and recapture of special elective**
1005 **benefits.** (a) In this section:

1006 (1) "Special elective benefit" means a reduction in an
1007 estate tax obtained by an election for:

1008 (A) A reduced valuation of specified property that
1009 is included in the gross estate;

1010 (B) A deduction from the gross estate, other than
1011 a marital or charitable deduction, allowed for specified property;
1012 or

1013 (C) An exclusion from the gross estate of
1014 specified property.



1015 (2) "Specified property" means property for which an
1016 election has been made for a special elective benefit.

1017 (b) If an election is made for one or more special elective
1018 benefits, an initial apportionment of a hypothetical estate tax
1019 must be computed as if no election for any of those benefits had
1020 been made. The aggregate reduction in estate tax resulting from
1021 all elections made must be allocated among holders of interests in
1022 the specified property in the proportion that the amount of
1023 deduction, reduced valuation, or exclusion attributable to each
1024 holder's interest bears to the aggregate amount of deductions,
1025 reduced valuations, and exclusions obtained by the decedent's
1026 estate from the elections. If the estate tax initially
1027 apportioned to the holder of an interest in specified property is
1028 reduced to zero, any excess amount of reduction reduces ratably
1029 the estate tax apportioned to other persons that receive interests
1030 in the apportionable estate.

1031 (c) An additional estate tax imposed to recapture all or
1032 part of a special elective benefit must be charged to the persons
1033 that are liable for the additional tax under the law providing for
1034 the recapture.

1035 **SECTION 40.** The following shall be codified as Section
1036 91-25-15, Mississippi Code of 1972:

1037 91-25-15. **Securing payment of estate tax from property in**
1038 **possession of fiduciary.** (a) A fiduciary may defer a



1039 distribution of property until the fiduciary is satisfied that
1040 adequate provision for payment of the estate tax has been made.

1041 (b) A fiduciary may withhold from a distributee an amount
1042 equal to the amount of estate tax apportioned to an interest of
1043 the distributee and the estate tax required to be advanced by the
1044 distributee.

1045 (c) As a condition to a distribution, a fiduciary may
1046 require the distributee to provide a bond or other security for
1047 the portion of the estate tax apportioned to the distributee and
1048 also for the estate tax required to be advanced by the
1049 distributee.

1050 **SECTION 41.** The following shall be codified as Section
1051 91-25-17, Mississippi Code of 1972:

1052 91-25-17. **Collection of estate tax by fiduciary.** (a) A
1053 fiduciary responsible for payment of an estate tax may collect
1054 from any person the estate tax apportioned to and the tax required
1055 to be advanced by the person.

1056 (b) Except as otherwise provided in Section 27-10-61, any
1057 estate tax due from a person that cannot be collected from the
1058 person may be collected by the fiduciary from other persons in the
1059 following order of priority:

1060 (1) Any person having an interest in the apportionable
1061 estate which is not exonerated from the tax;

1062 (2) Any other person having an interest in the
1063 apportionable estate; or



1064 (3) Any person having an interest in the gross estate.

1065 (c) A domiciliary fiduciary may recover from an ancillary
1066 personal representative the estate tax apportioned to the property
1067 controlled by the ancillary personal representative.

1068 (d) The total tax collected from a person under this act may
1069 not exceed the value of the person's interest.

1070 **SECTION 42.** The following shall be codified as Section
1071 91-25-19, Mississippi Code of 1972:

1072 91-25-19. **Right of reimbursement.** (a) A person required
1073 under Section 91-25-17 to pay an estate tax greater than the
1074 amount due from the person under Section 91-25-5 or 91-25-7 has a
1075 right to reimbursement from another person to the extent that the
1076 other person has not paid the tax required by Section 91-25-5 or
1077 91-25-7 and a right to reimbursement ratably from other persons to
1078 the extent that each has not contributed a portion of the amount
1079 collected under Section 91-25-17(b). The right to reimbursement
1080 includes the right to receive interest on the amount of the estate
1081 tax payment from the date of the payment to the date of
1082 reimbursement at the interest rate that would be charged during
1083 such period on an estate tax deficiency by the taxing authority
1084 that imposed the estate tax. The right of reimbursement also
1085 includes the reasonable costs of collection, including attorney's
1086 fees.

1087 (b) A fiduciary may enforce the right of reimbursement under
1088 subsection (a) on behalf of the person that is entitled to the



1089 reimbursement and shall take reasonable steps to do so if
1090 requested by the person.

1091 **SECTION 43.** The following shall be codified as Section
1092 91-25-21, Mississippi Code of 1972:

1093 91-25-21. **Action to determine or enforce act.** (a) The
1094 chancery court has jurisdiction and all power necessary to make
1095 the prorations and the orders directing the payment of amounts of
1096 tax contemplated by this chapter.

1097 (b) Such jurisdiction may be invoked by petition filed in
1098 the chancery court by an executor, administrator, temporary
1099 administrator, trustee or other person acting in a fiduciary
1100 capacity, transferee, beneficiary of the gross estate, or any
1101 other person having such an interest as may in the judgment of the
1102 chancery court entitle such person to file such a petition.

1103 (c) The chancery court, upon making a determination as
1104 provided in this chapter, shall make a decree or order directing
1105 the executor, administrator or other fiduciary to charge the
1106 prorated amounts against the persons against whom the tax has been
1107 so prorated, insofar as such person is in possession of property
1108 or interests of such persons against whom such charge has been
1109 made, and summarily directing all other persons against whom the
1110 tax has been so prorated or who are in possession of property or
1111 interests of such persons to make payment of such prorated amounts
1112 to such executor, administrator or other fiduciary or to another
1113 person who has paid such tax.



1114 **SECTION 44.** The following shall be codified as Section
1115 91-25-23, Mississippi Code of 1972:

1116 91-25-23. **Uniformity of application and construction.** In
1117 applying and construing this chapter, consideration must be given
1118 to the need to promote uniformity of the law with respect to its
1119 subject matter among states that enact it.

1120 **SECTION 45.** The following shall be codified as Section
1121 91-25-25, Mississippi Code of 1972:

1122 91-25-25. **Severability.** If any provision of this chapter or
1123 the application thereof to any person or circumstance is held
1124 invalid, the invalidity does not affect other provisions or
1125 applications of this chapter which can be given effect without the
1126 invalid provision or application, and to this end the provisions
1127 of this chapter are severable.

1128 **SECTION 46.** The following shall be codified as Section
1129 91-25-27, Mississippi Code of 1972:

1130 91-25-27. **Delayed application.** (a) This chapter does not
1131 apply to the estate of a decedent who dies on or within one (1)
1132 year after the effective date of this act, nor with respect to a
1133 decedent who dies more than one (1) year after the effective date
1134 of this act, if the decedent continuously lacked testamentary
1135 capacity from the expiration of the one-year period until the date
1136 of death.

1137 (b) With respect to a decedent who dies on or after the
1138 effective date of this act, to whom this chapter does not apply,



1139 estate taxes must be apportioned under the law in effect on the
1140 day before the effective date of this act.

1141 (c) Notwithstanding the provisions of subsection (a) and
1142 (b), this chapter applies with respect to a decedent to whom the
1143 provisions would not otherwise apply if the decedent expressly and
1144 unambiguously directs that the provisions shall apply to such
1145 decedent.

1146 **SECTION 47.** The following shall be codified as Section
1147 91-7-501 Mississippi Code of 1972:

1148 91-7-501. As used in this act:

1149 (1) "Local administration" means administration by a
1150 personal representative appointed in this state pursuant to
1151 appointment proceedings.

1152 (2) "Personal representative" means an executor, an
1153 administrator with or without the will annexed, or other
1154 representative authorized in a court of competent jurisdiction to
1155 conduct an estate administration.

1156 (3) "Local personal representative" includes any
1157 personal representative appointed in this state by appointment
1158 proceedings and excludes foreign personal representatives who
1159 acquire the power of a local personal representative under Section
1160 91-7-509.

1161 (4) "Resident creditor" means a person domiciled in, or
1162 doing business in this state, who is, or could be, a claimant
1163 against an estate of a nonresident decedent.



1164 (5) "Foreign personal representative" means a personal
1165 representative appointed by another jurisdiction.

1166 **SECTION 48.** The following shall be codified as Section
1167 91-7-503, Mississippi Code of 1972:

1168 91-7-503. At any time after the expiration of sixty (60)
1169 days from the death of a nonresident decedent, any person indebted
1170 to the estate of the nonresident decedent or having possession or
1171 control of personal property, or of an instrument evidencing a
1172 debt, obligation, stock or chose in action belonging to the estate
1173 of the nonresident decedent may pay the debt, deliver the personal
1174 property, or the instrument evidencing the debt, obligation, stock
1175 or chose in action, to the domiciliary foreign personal
1176 representative of the nonresident decedent upon being presented
1177 with proof of his appointment, including the admitted will and
1178 letters testamentary or letters of administration or substantial
1179 equivalent, authenticated under the Acts of Congress under 28
1180 U.S.C.A. Section 1739, and an affidavit made by or on behalf of
1181 the personal representative stating:

1182 (1) The date of the death of the nonresident decedent;

1183 (2) That no local administration, or application or
1184 petition therefor, is pending in this state; and

1185 (3) That the domiciliary foreign personal
1186 representative is entitled to payment or delivery.

1187 **SECTION 49.** The following shall be codified as Section
1188 91-7-505, Mississippi Code of 1972:



1189 91-7-505. Payment or delivery made in good faith on the
1190 basis of the proof of authority, including the admitted will and
1191 letters testamentary or letters of administration or substantial
1192 equivalent, authenticated under the Acts of Congress under 28
1193 U.S.C.A. Section 1739, and affidavit releases the debtor or person
1194 having possession of the personal property to the same extent as
1195 if payment or delivery had been made to a local personal
1196 representative.

1197 **SECTION 50.** The following shall be codified as Section
1198 91-7-507, Mississippi Code of 1972:

1199 91-7-507. Payment or delivery under Section 91-7-503 may not
1200 be made if a resident creditor of the nonresident decedent has
1201 notified the debtor of the nonresident decedent or the person
1202 having possession of the personal property belonging to the
1203 nonresident decedent that the debt should not be paid nor the
1204 property delivered to the domiciliary foreign personal
1205 representative.

1206 **SECTION 51.** The following shall be codified as Section
1207 91-7-509, Mississippi Code of 1972:

1208 91-7-509. If no local administration or application or
1209 petition therefor is pending in this state, a domiciliary foreign
1210 personal representative may file with a court in this state in a
1211 county in which property belonging to the decedent is located,
1212 authenticated copies of his appointment, including the admitted
1213 will and letters testamentary or letters of administration or



1214 substantial equivalent, authenticated under the Acts of Congress
1215 under 28 U.S.C.A. Section 1739, and any official bond he has
1216 given. A domiciliary foreign personal representative is subject
1217 to the estate administration requirements and obligations set
1218 forth in Title 91, Chapter 7, Mississippi Code of 1972.

1219 **SECTION 52.** The following shall be codified as Section
1220 91-7-511, Mississippi Code of 1972:

1221 91-7-511. A domiciliary foreign personal representative who
1222 has complied with Section 91-7-509 may exercise as to assets in
1223 this state all powers of a local personal representative, and may
1224 maintain actions and proceedings in this state subject to any
1225 conditions imposed upon nonresident parties generally.

1226 **SECTION 53.** The following shall be codified as Section
1227 91-7-513, Mississippi Code of 1972:

1228 91-7-513. The power of a domiciliary foreign personal
1229 representative under Section 91-7-503 or Section 91-7-511 shall be
1230 exercised only if there is no administration or application
1231 therefor pending in this state. An application or petition for
1232 local administration of the estate terminates the power of the
1233 foreign personal representative to act under Section 91-7-509, but
1234 the local court may allow the foreign personal representative to
1235 exercise limited powers to preserve the estate. A person who,
1236 before receiving actual notice of a pending local administration,
1237 has changed his position in reliance upon the powers of a foreign
1238 personal representative shall not be prejudiced by reason of the



1239 application or petition for, or grant of, local administration.
1240 The local personal representative is subject to all duties and
1241 obligations which have accrued by virtue of the exercise of the
1242 powers by the foreign personal representative and may be
1243 substituted for him in any action or proceedings in this state.

1244 **SECTION 54.** The following shall be codified as Section
1245 91-7-515, Mississippi Code of 1972:

1246 91-7-515. In respect to a nonresident decedent, the
1247 provisions of this chapter govern:

1248 (1) Proceedings, if any, in a court of this state for
1249 probate of the will, appointment, removal, supervision, and
1250 discharge of the local personal representative, and any other
1251 order concerning the estate; and

1252 (2) The status, powers, duties and liabilities of any
1253 local personal representative and the rights of claimants,
1254 purchasers, distributees and others in regard to a local
1255 administration.

1256 **SECTION 55.** The following shall be codified as Section
1257 91-7-517, Mississippi Code of 1972:

1258 91-7-517. A foreign personal representative submits
1259 personally to the jurisdiction of the courts of this state in any
1260 proceeding relating to the estate by: (1) filing authenticated
1261 copies of his appointment as provided in Section 91-7-509; or (2)
1262 receiving payment of money or taking delivery of personal property
1263 under Section 91-7-503; or (3) doing any act as a personal



1264 representative in this state that would have given the state
1265 jurisdiction over him as an individual. Jurisdiction under
1266 paragraph (1) is limited to the money or value of personal
1267 property collected.

1268 **SECTION 56.** The following shall be codified as Section
1269 91-7-519, Mississippi Code of 1972:

1270 91-7-519. In addition to jurisdiction conferred by Section
1271 91-7-515, a foreign personal representative is subject to the
1272 jurisdiction of the courts of this state to the same extent that
1273 his decedent was subject to jurisdiction immediately before death.

1274 **SECTION 57.** The following shall be codified as Section
1275 91-7-521, Mississippi Code of 1972:

1276 91-7-521. (a) Service of process may be made upon the
1277 foreign personal representative by registered or certified mail,
1278 addressed to his last reasonably ascertainable address, requesting
1279 a return receipt signed by addressee only. Notice by ordinary
1280 first-class mail is sufficient if registered or certified mail
1281 service to the addressee is unavailable. Service may be made upon
1282 a foreign personal representative in the manner in which service
1283 could have been made under other laws of this state on either the
1284 foreign personal representative or his decedent immediately before
1285 death.

1286 (b) If service is made upon a foreign personal
1287 representative as provided in subsection (a), he shall be allowed
1288 at least thirty (30) days within which to appear or respond.



1289 **SECTION 58.** The following shall be codified as Section
1290 91-7-523, Mississippi Code of 1972:

1291 91-7-523. An adjudication rendered in any jurisdiction in
1292 favor of or against any foreign personal representative of the
1293 estate is as binding on the local personal representative as if he
1294 were a party to the adjudication.

1295 **SECTION 59.** The following shall be codified as Section
1296 91-8-501, Mississippi Code of 1972:

1297 91-8-501. **Application of Article 5; rights of beneficiary's**
1298 **creditor or assignee.** This Article 5 applies to a creditor's or
1299 assignee's claims and ability to reach mandatory, support and
1300 discretionary interests regardless of whether such interests are
1301 subject to a spendthrift provision. To the extent not otherwise
1302 prohibited by this Article 5, the court may authorize a creditor
1303 or assignee of the beneficiary to reach the beneficiary's
1304 distribution interest by attachment of present or future
1305 distributions to or for the benefit of the beneficiary or other
1306 means. The court may limit the award to such relief as is
1307 appropriate under the circumstances.

1308 **SECTION 60.** The following shall be codified as Section
1309 91-8-502, Mississippi Code of 1972:

1310 91-8-502. **Spendthrift provision.** (a) Except as provided in
1311 Section 91-8-505, if the trust instrument provides that a
1312 beneficiary's interest in a trust is not subject to voluntary or
1313 involuntary transfer, the beneficiary's interest in the trust may



1314 not be transferred and is not subject to the enforcement of a
1315 money judgment until paid to the beneficiary.

1316 (b) A term of a trust providing that the interest of a
1317 beneficiary is held subject to a "spendthrift trust," or words of
1318 similar import, is sufficient to restrain both voluntary and
1319 involuntary transfer of the beneficiary's interest.

1320 (c) A spendthrift provision applies to all beneficial
1321 interests, including distribution interests whether with respect
1322 to income or principal or both, and remainder interests.

1323 (d) A beneficiary may not transfer an interest in a trust in
1324 violation of a valid spendthrift provision, and a creditor or
1325 assignee of the beneficiary may not reach the interest or a
1326 present, future or prospective distribution by the trustee before
1327 its receipt by the beneficiary. Similarly, a creditor or assignee
1328 of the beneficiary may not force a distribution from the trust.
1329 This subsection (d) remains applicable regardless of the
1330 beneficiary's potential right to force a distribution under
1331 Section 91-8-814.

1332 (e) Notwithstanding any other provision of this section to
1333 the contrary or whether a beneficiary has an outstanding creditor,
1334 a trustee, cotrustee, or other fiduciary of a trust subject to a
1335 spendthrift provision may directly pay any expense on behalf of
1336 the beneficiary and may exhaust the income and principal of the
1337 trust for the benefit of the beneficiary. A trustee, cotrustee or
1338 other fiduciary is not liable to any creditor for paying the



1339 expenses of a beneficiary under a trust subject to a spendthrift
1340 provision. This subsection (e) remains applicable whether the
1341 beneficiary for whom the direct payment was made held a mandatory,
1342 support, discretionary or remainder interest.

1343 **SECTION 61.** The following shall be codified as Section
1344 91-8-503, Mississippi Code of 1972:

1345 91-8-503. **Discretionary interests; effect thereof.** (a) A
1346 discretionary interest is neither a property interest nor an
1347 enforceable right; it is a mere expectancy.

1348 (b) Relative to a discretionary interest, whether or not a
1349 trust contains a spendthrift provision:

1350 (1) A creditor or assignee cannot force or otherwise
1351 reach a distribution with regard to a discretionary interest;

1352 (2) A creditor or assignee cannot require a trustee,
1353 cotrustee or other fiduciary to exercise the trustee's,
1354 cotrustee's or other fiduciary's discretion to make a distribution
1355 with regard to a discretionary interest;

1356 (3) Whether or not a beneficiary has any outstanding
1357 creditors or assignees, a trustee, cotrustee or other fiduciary of
1358 a discretionary interest may directly pay any expense on behalf of
1359 the beneficiary and may exhaust the income and principal of the
1360 trust for the benefit of the beneficiary;

1361 (4) A trustee, cotrustee or other fiduciary is not
1362 liable to any creditor or assignee for paying the expenses of a
1363 beneficiary of a discretionary interest;



1364 (5) (A) Whether or not a beneficiary holding a
1365 discretionary interest is also a trustee, cotrustee or other
1366 fiduciary, subsections (b)(1) through (4) remain applicable if:

1367 (i) The beneficiary-fiduciary does not have
1368 the discretion to make or participate in making distributions to
1369 such beneficiary-fiduciary;

1370 (ii) The beneficiary-fiduciary's discretion
1371 to make or participate in making distributions to such
1372 beneficiary-fiduciary is limited by an ascertainable standard; or

1373 (iii) The beneficiary-fiduciary's discretion
1374 to make or participate in making distributions to such
1375 beneficiary-fiduciary is exercisable only with the consent of a
1376 cotrustee or another person holding an adverse interest.

1377 (B) A creditor or assignee may compel or otherwise
1378 reach a distribution only to the extent the creditor or assignee
1379 may compel or otherwise reach a distribution if the beneficiary
1380 was not acting as a trustee, cotrustee or other fiduciary.

1381 **SECTION 62.** The following shall be codified as Section
1382 91-8-504, Mississippi Code of 1972:

1383 91-8-504. **Creditors' claims against settlor.** (a) Whether
1384 or not the terms of a trust contain a spendthrift provision, the
1385 following rules apply:

1386 (1) During the lifetime of the settlor, the property of
1387 a revocable trust is subject to claims of the settlor's creditors.



1388 (2) Except as provided in the Mississippi Qualified
1389 Disposition in Trust Act and subsections (a) (3) through (5)
1390 regarding an irrevocable special needs trust, a creditor or
1391 assignee of the settlor of an irrevocable trust may reach the
1392 maximum amount that can be distributed to or for the settlor's
1393 benefit. If a trust has more than one (1) settlor, the amount the
1394 creditor or assignee of a particular settlor may reach may not
1395 exceed the settlor's interest in the portion of the trust
1396 attributable to that settlor's contribution.

1397 (3) For the purposes of this section, "irrevocable
1398 special needs trust" means an irrevocable trust established for
1399 the benefit of one or more disabled persons, which includes, but
1400 is not limited to, an individual who is disabled as defined in 42
1401 U.S.C. Section 1382c(a), as well as an individual who is disabled
1402 as defined in any similar federal, state or other jurisdictional
1403 law or regulation, or has a condition that is substantially
1404 equivalent to one that qualifies the person as disabled under such
1405 a provision, even if not officially found to be disabled by a
1406 governmental body, if one (1) of the purposes of the trust,
1407 expressed in the trust instrument or implied from the trust
1408 instrument, is to allow the disabled person to qualify or continue
1409 to qualify for public, charitable or private benefits that might
1410 otherwise be available to the disabled person. The existence of
1411 one or more nondisabled remainder beneficiaries of the trust does



1412 not disqualify it as an irrevocable special needs trust for the
1413 purposes of this section.

1414 (4) A creditor or assignee of the settlor of an
1415 irrevocable special needs trust, as defined in subsection (a)(3),
1416 may not reach or compel distributions from the special needs
1417 trust, to or for the benefit of the settlor of the special needs
1418 trust, or otherwise, whether or not the irrevocable special needs
1419 trust complies with, and irrespective of the requirements of, the
1420 Mississippi Qualified Disposition in Trust Act.

1421 (5) Notwithstanding any law to the contrary, neither a
1422 creditor nor any other person shall have any claim or cause of
1423 action against the trustee or other fiduciary, or an advisor of an
1424 irrevocable special needs trust. For purposes of this subsection
1425 (a)(5), an advisor of an irrevocable special needs trust includes
1426 any person involved in the counseling, drafting, preparation,
1427 execution or funding of an irrevocable special needs trust.

1428 (6) After the death of a settlor, and subject to the
1429 settlor's right to direct the source from which liabilities will
1430 be paid, the property of a trust that was revocable immediately
1431 preceding the settlor's death is subject to claims of the
1432 settlor's creditors, costs of administration of the settlor's
1433 estate, and the expenses of the settlor's funeral and disposal of
1434 remains subject to the following:

1435 (A) With respect to claims, expenses, and taxes in
1436 connection with the settlement of the settlor's estate, any claim



1437 of a creditor that would be barred against the fiduciary of a
1438 settlor's estate, the estate of the settlor, or any creditor or
1439 beneficiary of the settlor's estate shall be barred against the
1440 trust property of a trust that was revocable at the settlor's
1441 death, the trustee of the revocable trust, and the creditors and
1442 beneficiaries of the trust.

1443 (B) Unless a personal representative of the
1444 settlor's estate has been appointed or an application or petition
1445 for appointment of a personal representative of the settlor's
1446 estate is pending, the trustee at any time may give notice to any
1447 person the trustee has reason to believe may have a claim against
1448 the settlor at death, at the claimant's last known address. The
1449 notice shall contain the name and address of the trustee to whom
1450 the claim must be presented and provide information that failure
1451 to present the claim to the trustee within ninety (90) days of the
1452 date of the notice will forever bar the claim. If the person
1453 fails to present the claim in writing within ninety (90) days from
1454 the date of the notice, then the person is forever barred from
1455 asserting or recovering on the claim from the trustee, the trust
1456 property and the creditors and beneficiaries of the trust. A
1457 person who presents a claim on or before the date specified in the
1458 notice may not later increase the claim following the expiration
1459 of the ninety-day period.

1460 (C) Unless a personal representative of the
1461 settlor's estate has been appointed or an application or petition



1462 for appointment of a personal representative of the settlor's
1463 estate is pending, a trustee may also publish in some newspaper in
1464 the county of the decedent's last residence a notice requiring all
1465 persons having unknown claims against the settlor to present their
1466 claims to the trustee, which notice shall state that failure to
1467 present the claim to the trustee within ninety (90) days of the
1468 date after the first publication of the notice will forever bar
1469 the claim. The notice must be published for three (3) consecutive
1470 weeks, and proof of publication must be maintained with the books
1471 and records of the trust. If a person fails to present a claim in
1472 writing within ninety (90) days from the date of first
1473 publication, that person shall be forever barred from asserting or
1474 recovering on the claim from the trustee, the trust property and
1475 the creditors and beneficiaries of the trust. A person who
1476 presents a claim on or before ninety (90) days from first
1477 publication may not later increase the claim following the
1478 expiration of the ninety-day period.

1479 (D) In addition to subsection (a) (6) (B) and
1480 (a) (6) (C), if a claim is not presented in writing to the personal
1481 representative of the settlor's estate or to the trustee: (i)
1482 within six (6) months from the date of the appointment of the
1483 initial personal representative of the settlor's estate; or (ii)
1484 if no personal representative is appointed within six (6) months
1485 from the settlor's date of death and a claim is not presented in
1486 writing to the trustee within six (6) months from the settlor's



1487 date of death, a trustee is not chargeable for any assets that the
1488 trustee may pay or distribute in good faith in satisfaction of any
1489 lawful claims, expenses, or taxes or to any beneficiary before the
1490 claim was presented. A payment or distribution of assets by a
1491 trustee is deemed to have been made in good faith unless the
1492 creditor can prove that the trustee had actual knowledge of the
1493 claim at the time of the payment or distribution. The six-month
1494 period shall not be interrupted or affected by the death,
1495 resignation, or removal of a trustee, except that the time during
1496 which there is no trustee in office shall not be counted as part
1497 of the period.

1498 (E) A claim presented to the trustee under
1499 subsection (a) (6) (B) or (a) (6) (C) must contain substantially the
1500 same information as required in Section 91-7-149.

1501 (F) The provisions of Section 91-7-261 detailing
1502 the priority of payment of claims, expenses, and taxes from the
1503 probate estate of a decedent apply to a revocable trust to the
1504 extent the assets of the settlor's probate estate are inadequate
1505 and the personal representative or creditor or taxing authority of
1506 the settlor's estate has perfected its right to collect from the
1507 settlor's revocable trust.

1508 (G) If a personal representative has been
1509 appointed for the settlor's estate, assets of the trust shall
1510 abate pari passu with assets of the settlor's estate. If no
1511 personal representative has been appointed for the settlor's



1512 estate, assets of the trust shall abate in the same order of
1513 preference as would apply to a decedent's estate.

1514 (H) Nothing in this paragraph (6) obligates a
1515 trustee to seek appointment of a personal representative of a
1516 settlor's estate, and a trustee is not liable to any beneficiary
1517 or other third party for failure to do so.

1518 (b) For purposes of this section during the period a power
1519 of withdrawal may be exercised or upon the lapse, release, or
1520 waiver of the power, the holder is treated as the settlor of the
1521 trust only to the extent the value of the property affected by the
1522 lapse, release, or waiver exceeds the greater of:

1523 (1) The amount specified in Section 2041(b)(2) or
1524 2514(e) of the Internal Revenue Code of 1986 (26 U.S.C. Section
1525 2041(b)(2) and Section 2514(e));

1526 (2) If the donor of the property subject to holder's
1527 power of withdrawal is not married at the time of the transfer of
1528 property to the trust, the amount specified in Section 2503(b) of
1529 the Internal Revenue Code of 1986 (26 U.S.C. Section 2503(b)); or

1530 (3) If the donor of the property subject to holder's
1531 power of withdrawal is married at the time of the transfer of
1532 property to the trust, twice the amount specified in Section
1533 2503(b) of the Internal Revenue Code of 1986 (26 U.S.C. Section
1534 2503(b)).

1535 (4) A power to withdraw is not considered to exceed the
1536 greater of the amounts specified in subsection (b)(1) through (3)



1537 if the amount subject to a withdrawal right granted to the holder
1538 in any calendar year does not exceed the greater of such amounts
1539 even if the total amount subject to the holder's power to withdraw
1540 exceeds the greater of such amounts in any subsequent calendar
1541 year.

1542 (5) Except to the extent provided in this subsection
1543 (b), a person who is the holder of a power of withdrawal is not
1544 considered a settlor of the trust by failing to exercise the power
1545 of withdrawal, releasing the power of withdrawal, or waiving the
1546 power of withdrawal.

1547 (c) For purposes of subsection (a) (2), the following are not
1548 considered an amount that may be distributed to or for the
1549 settlor's benefit:

1550 (1) The power of a trustee of an irrevocable trust,
1551 whether arising under the trust agreement or any other provision
1552 of law, to make a distribution to or for the benefit of a settlor
1553 for the purpose of reimbursing the settlor in an amount equal to
1554 any income taxes payable on any portion of the trust principal and
1555 income that are includable in the settlor's personal income under
1556 applicable law, as well as distributions made by the trustee under
1557 such authority; and

1558 (2) The power of the settlor to exercise any of the
1559 powers described in Section 675 of the Internal Revenue Code of
1560 1986 (26 U.S.C. Section 675).



1561 (d) Property contributed to the following trusts is not
1562 considered to have been contributed by the settlor, and a person
1563 who would otherwise be treated as a settlor or deemed settlor of
1564 the following trusts may not be treated as a settlor:

1565 (1) An irrevocable inter vivos marital trust if:

1566 (A) The settlor is a beneficiary of the trust
1567 after the death of the settlor's spouse; and

1568 (B) The trust is treated as:

1569 (i) Qualified terminable interest property
1570 under Section 2523(f), Internal Revenue Code of 1986; or

1571 (ii) A general power of appointment trust
1572 under Section 2523(e), Internal Revenue Code of 1986;

1573 (2) An irrevocable inter vivos trust of which the
1574 settlor's spouse is a beneficiary if the settlor is a beneficiary
1575 of the trust after the death of the settlor's spouse; or

1576 (3) An irrevocable trust for the benefit of any person
1577 to the extent that the property of the trust was subject to a
1578 power of appointment in another person, whether the settlor's
1579 interest was created by the lapse or exercise of such power.

1580 The effect of this subsection (d) shall be that the power of
1581 a trustee, and any benefit resulting to the settlor, whether
1582 arising under the trust agreement or any other provision of the
1583 law, to make a distribution to or for the benefit of a settlor or
1584 to otherwise permit the settlor to use or benefit from trust
1585 property following the death of the settlor's spouse, shall not be



1586 considered an amount that may be distributed to or for the
1587 settlor's benefit for purposes of subsection (a)(2).

1588 (e) A beneficiary is not considered to be a settlor, to have
1589 made a voluntary or involuntary transfer of the beneficiary's
1590 interest in the trust, or to have the power to make a voluntary or
1591 involuntary transfer of the beneficiary's interest in the trust,
1592 merely because the beneficiary holds, exercises, waives, releases,
1593 or allows to lapse:

1594 (1) A presently exercisable power to:

1595 (A) Consume, invade, appropriate, or distribute
1596 property to or for the benefit of the beneficiary, if the power
1597 is:

1598 (i) Exercisable only on consent of another
1599 person holding an interest adverse to the beneficiary's interest;
1600 or

1601 (ii) Limited by an ascertainable standard,
1602 including health, education, support, or maintenance of the
1603 beneficiary; or

1604 (B) Appoint any property of the trust to or for
1605 the benefit of a person other than the beneficiary, a creditor of
1606 the beneficiary, the beneficiary's estate, or a creditor of the
1607 beneficiary's estate;

1608 (2) A testamentary power of appointment; or

1609 (3) A presently exercisable right described by

1610 subsection (b).



1611 (f) For purposes of subsection (a) (2) and subsection (g), a
1612 person who becomes a beneficiary of a trust due to the exercise of
1613 a power of appointment by someone other than such person shall not
1614 be considered a settlor of the trust.

1615 (g) (1) Notwithstanding Section 15-3-115, no person shall
1616 bring an action with respect to a transfer of property to a
1617 spendthrift trust if the person is a creditor when the transfer is
1618 made, unless the action is commenced within the later of two (2)
1619 years after the transfer is made or six (6) months after the
1620 person discovers or reasonably should have discovered the
1621 transfer; and

1622 (2) If subsection (g) (1) applies:

1623 (A) A person is deemed to have discovered the
1624 existence of a transfer at the time any public record is made of
1625 the transfer, including, but not limited to, a conveyance of real
1626 property that is recorded in the office of the county register of
1627 deeds of the county in which the property is located or the filing
1628 of a financing statement Uniform Commercial Code, or the
1629 equivalent recording or filing of either with the appropriate
1630 person or official under the laws of a jurisdiction other than
1631 this state;

1632 (B) A creditor cannot bring an action with respect
1633 to a transfer of property to a spendthrift trust unless that
1634 creditor proves by clear and convincing evidence that the



1635 settlor's transfer to the trust was made with the intent to
1636 defraud that specific creditor; and

1637 (i) Notwithstanding any law to the contrary,
1638 a creditor or any other person does not have a claim or cause of
1639 action against the trustee, other fiduciary, or an advisor of a
1640 spendthrift trust if that claim or cause of action is based in any
1641 way on any person making use of the benefits of this subsection
1642 (g);

1643 (ii) For purposes of subsection (g) (2) (B), an
1644 advisor of a spendthrift trust includes, but is not limited to,
1645 any person involved in the counseling, drafting, preparation,
1646 execution or funding of a spendthrift trust;

1647 (iii) For purposes of subsection
1648 (g) (2) (B) (i), counseling, drafting, preparation, execution or
1649 funding of a spendthrift trust includes the counseling, drafting,
1650 preparation, execution and funding of a limited partnership, a
1651 limited liability company or any other type of entity if interests
1652 in the limited partnership, limited liability company or other
1653 entity are subsequently transferred to a spendthrift trust;

1654 (3) Notwithstanding subsection (g) (2) (B), in the same
1655 manner as provided other than by this section to trusts in
1656 general, a beneficiary, settlor, cotrustee, trust advisor or trust
1657 protector retains the right to bring a claim against a trustee or
1658 against another cotrustee, trust advisor, trust protector or any
1659 of their predecessors; however, no such claim shall arise solely



1660 because a person used, or attempted to use, the benefits of this
1661 subsection (g);

1662 (4) If more than one (1) transfer of property is made
1663 to a spendthrift trust, the subsequent transfer of property to the
1664 spendthrift trust shall be disregarded for the purpose of
1665 determining whether a person may bring an action under this
1666 subsection (g) with respect to a prior transfer of property to the
1667 spendthrift trust; any distribution to a beneficiary from the
1668 spendthrift trust shall be deemed to have been made from the most
1669 recent transfer made to the spendthrift trust;

1670 (5) With the exception of a claim brought under
1671 subsection (g) (3), notwithstanding any other law, no action of any
1672 kind, including, without limitation, an action to enforce a
1673 judgment entered by a court or other body having adjudicative
1674 authority, shall be brought at law or in equity against the
1675 trustee, other fiduciary or advisor of a spendthrift trust if, as
1676 of the date the action is brought, an action by a creditor with
1677 respect to a transfer of property to the spendthrift trust would
1678 be barred under this subsection (g); and

1679 (6) This subsection (g) shall not abridge the rights of
1680 a creditor, to the extent otherwise provided by this section, to
1681 reach the maximum amount that can be distributed to or for the
1682 settlor's benefit under a spendthrift trust.

1683 **SECTION 63.** The following shall be codified as Section
1684 91-8-505, Mississippi Code of 1972:



1685 91-8-505. **Distributions relative to support, mandatory and**
1686 **certain remainder interests.** (a) Relative to a support interest,
1687 whether or not a trust contains a spendthrift provision:

1688 (1) Although a beneficiary of a support interest has
1689 enforceable rights under Section 91-8-814, those rights do not
1690 raise the beneficiary's support interest to the level of a
1691 property interest;

1692 (2) No creditor or assignee shall reach that support
1693 interest until a distribution from the support interest is
1694 actually made to the beneficiary;

1695 (3) After all or a portion of a support interest is
1696 distributed to the beneficiary, no portion of the distribution
1697 made from the support interest shall be reached by a creditor or
1698 assignee of the beneficiary except to the extent that the
1699 distribution made from the support interest exceeds the amount
1700 necessary for the health, education, maintenance and support of
1701 the beneficiary who received the distribution made from the
1702 support interest;

1703 (4) In the case of a beneficiary who holds a support
1704 interest, the use or enjoyment of property belonging to the trust
1705 by that beneficiary shall not be transferred and shall not be
1706 reached by creditors or assignees of that beneficiary;

1707 (5) Regardless of whether a beneficiary has any
1708 outstanding creditors or assignees, a trustee or other fiduciary
1709 of a support interest may directly pay any expense on behalf of



1710 the beneficiary and may exhaust the income and principal of the
1711 trust for the benefit of the beneficiary; and

1712 (6) A trustee or other fiduciary is not liable to any
1713 creditor or assignee for paying the expenses of a beneficiary of a
1714 support interest.

1715 (b) Relative to a mandatory interest, whether or not a trust
1716 contains a spendthrift provision:

1717 (1) While a court may order a trustee or other
1718 fiduciary to distribute a past-due mandatory distribution to its
1719 beneficiary, no court shall order a trustee or other fiduciary to
1720 distribute such past-due mandatory distribution directly to a
1721 creditor or assignee;

1722 (2) Regardless of whether a beneficiary has any
1723 outstanding creditors or assignees, a trustee or other fiduciary
1724 of a mandatory interest may directly pay any expense on behalf of
1725 the beneficiary and may exhaust the income and principal of the
1726 trust for the benefit of the beneficiary;

1727 (3) A trustee or other fiduciary is not liable to any
1728 creditor or assignee for paying the expenses of a beneficiary of a
1729 mandatory interest.

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



1735 assistance program administered by the Department of Human
1736 Services.

1737 **SECTION 64.** The following shall be codified as Section
1738 91-8-506, Mississippi Code of 1972:

1739 91-8-506. **Personal obligations of trustee.** Trust property
1740 is not subject to personal obligations of the trustee, even if the
1741 trustee becomes insolvent or bankrupt.

1742 **SECTION 65.** The following shall be codified as Section
1743 91-8-507, Mississippi Code of 1972:

1744 91-8-507. **Removal or replacement power over trustee or other**
1745 **fiduciary not reachable by holder's creditors; interests of**
1746 **beneficiary who is also a trustee or other fiduciary not**
1747 **reachable.** (a) A creditor or assignee of a beneficiary does not
1748 have the power to reach an interest of a beneficiary or any other
1749 person who holds an unconditional or conditional removal or
1750 replacement power over a trustee or other fiduciary. Such power
1751 over a trustee or other fiduciary is personal to the holder and
1752 shall not be exercised by the holder's creditors. No court shall
1753 direct a holder to exercise the power.

1754 (b) Subject to Section 91-8-504(b) (3):

1755 (1) A creditor or assignee of a beneficiary may not
1756 reach an interest of a beneficiary who is also a trustee,
1757 cotrustee or other fiduciary, or otherwise compel a distribution
1758 because the beneficiary is then serving as a trustee, cotrustee or
1759 other fiduciary; and



1760 (2) A court may not foreclose against a beneficiary's
1761 interest described in subsection (a).

1762 **SECTION 66.** The following shall be codified as Section
1763 91-8-508, Mississippi Code of 1972:

1764 91-8-508. **Judicial foreclosure of beneficial interests,**
1765 **powers of appointment, and reserved powers prohibited; certain**
1766 **reaches prohibited.** Regardless of whether a trust contains a
1767 spendthrift provision:

1768 (1) No beneficial interest, power of appointment, or
1769 reserved power in a trust shall be judicially foreclosed.

1770 (2) Trust property subject to a power of appointment is
1771 not subject to the claims of the creditors of the holder of the
1772 power of appointment or to any permitted appointee unless and
1773 until such trust property is distributed pursuant to the exercise
1774 of such power of appointment and then only to the extent of the
1775 claims of the creditors of the appointee.

1776 (3) A creditor or an assignee of a beneficiary of a
1777 residuary interest in a trust has no interest in trust property
1778 until trust property is actually distributed to such assignee of
1779 the residuary interest and therefore trust property is not subject
1780 to claims of a creditor of the assignee.

1781 (4) A power of appointment is not a property interest.

1782 **SECTION 67.** The following shall be codified as Section
1783 89-22-1, Mississippi Code of 1972:



1784 89-22-1. **Short title.** This chapter may be cited as the
1785 "Mississippi Uniform Disclaimer of Property Interests Act
1786 (2002/2010)."

1787 **SECTION 68.** The following shall be codified as Section
1788 89-22-3, Mississippi Code of 1972:

1789 89-22-3. **Definitions.** In this chapter:

1790 (1) "Disclaimant" means the person to whom a disclaimed
1791 interest or power would have passed had the disclaimer not been
1792 made.

1793 (2) "Disclaimed interest" means the interest that would
1794 have passed to the disclaimant had the disclaimer not been made.

1795 (3) "Disclaimer" means the refusal to accept an
1796 interest in or power over property.

1797 (4) "Fiduciary" means a personal representative,
1798 trustee, agent acting under a power of attorney, or other person
1799 authorized to act as a fiduciary with respect to the property of
1800 another person.

1801 (5) "Jointly held property" means property held in the
1802 name of two (2) or more persons under an arrangement in which all
1803 holders have concurrent interests and under which the
1804 last-surviving holder is entitled to the whole of the property.
1805 Jointly held property does not include property held as tenants by
1806 the entirety.

1807 (6) "Person" means an individual, corporation, business
1808 trust, estate, trust, partnership, limited liability company,



1809 association, joint venture, government, governmental subdivision,
1810 agency, or instrumentality, public corporation, or any other legal
1811 or commercial entity.

1812 (7) "State" means a state of the United States, the
1813 District of Columbia, Puerto Rico, the United States Virgin
1814 Islands, or any territory or insular possession subject to the
1815 jurisdiction of the United States. The term includes an Indian
1816 tribe or band or an Alaskan native village that is recognized by
1817 federal law or formally acknowledged by a state.

1818 (8) "Trust" means:

1819 (A) An express trust, charitable or noncharitable,
1820 with additions thereto, whenever and however created; and

1821 (B) A trust created under a statute, judgment, or
1822 decree that requires the trust to be administered in the manner of
1823 an express trust.

1824 **SECTION 69.** The following shall be codified as Section
1825 89-22-5, Mississippi Code of 1972:

1826 89-22-5. **Scope.** This chapter applies to disclaimers of any
1827 interest in or power over property, whenever created.

1828 **SECTION 70.** The following shall be codified as Section
1829 89-22-7, Mississippi Code of 1972:

1830 89-22-7. **Chapter supplemented by other law.** (a) Unless
1831 displaced by a provision of this chapter, the principles of law
1832 and equity supplement this chapter.



1833 (b) This chapter does not limit any right of a person to
1834 waive, release, disclaim, or renounce an interest in or power over
1835 property under a law other than this chapter.

1836 **SECTION 71.** The following shall be codified as Section
1837 89-22-9, Mississippi Code of 1972:

1838 89-22-9. **Power to disclaim; general requirements; when**
1839 **irrevocable.** (a) A person may disclaim, in whole or part, any
1840 interest in or power over property, including a power of
1841 appointment. A person may disclaim the interest or power even if
1842 its creator imposed a spendthrift provision or similar restriction
1843 on transfer or a restriction or limitation on the right to
1844 disclaim.

1845 (b) Except to the extent a fiduciary's right to disclaim is
1846 expressly restricted or limited by another statute of this state
1847 or by the instrument creating the fiduciary relationship, a
1848 fiduciary may disclaim, in whole or part, any interest in or power
1849 over property, including a power of appointment, whether acting in
1850 a personal or representative capacity. A fiduciary may disclaim
1851 the interest or power even if its creator imposed a spendthrift
1852 provision or similar restriction on transfer or a restriction or
1853 limitation on the right to disclaim, or an instrument other than
1854 the instrument that created the fiduciary relationship imposed a
1855 restriction or limitation on the right to disclaim.

1856 (c) To the extent there is no material conflict of interest,
1857 a parent, as defined in Section 93-15-103(h), can disclaim on



1858 behalf of the parent's minor or incapacitated child, if a
1859 conservator or guardian has not been appointed for the child.

1860 (d) To be effective, a disclaimer must be in a writing or
1861 other record, declare the disclaimer, describe the interest or
1862 power disclaimed, be signed by the person making the disclaimer,
1863 and be delivered or filed in the manner provided in Section
1864 89-22-25. In this subsection "record" means information that is
1865 inscribed on a tangible medium or that is stored in an electronic
1866 or other medium and is retrievable in perceivable form.

1867 (e) A partial disclaimer may be expressed as a fraction,
1868 percentage, monetary amount, term of years, limitation of a power,
1869 or any other interest or estate in the property.

1870 (f) A disclaimer becomes irrevocable when it is delivered or
1871 filed under Section 89-22-25 or when it becomes effective as
1872 provided in Sections 89-22-11 through 89-22-23 of this chapter,
1873 whichever occurs later.

1874 (g) A disclaimer made under this chapter is not a transfer,
1875 assignment, or release.

1876 (h) A person obligated to distribute an interest disclaimed
1877 under this chapter is not liable to any person for distributing
1878 the interest as if the interest were not disclaimed unless the
1879 person obligated to distribute the interest receives a copy of the
1880 disclaimer before distributing the interest.

1881 **SECTION 72.** The following shall be codified as Section
1882 89-22-11, Mississippi Code of 1972:



1883 89-22-11. **Disclaimer of interest in property.** (a) In this
1884 section:

1885 (1) "Future interest" means an interest that takes
1886 effect in possession or enjoyment, if at all, later than the time
1887 of its creation.

1888 (2) "Time of distribution" means the time when a
1889 disclaimed interest would have taken effect in possession or
1890 enjoyment.

1891 (b) Except for a disclaimer governed by Section 89-22-13,
1892 89-22-15 or 89-22-17, the following rules apply to a disclaimer of
1893 an interest in property:

1894 (1) The disclaimer takes effect as of the time the
1895 instrument creating the interest becomes irrevocable, or, if the
1896 interest arose under the law of intestate succession, as of the
1897 time of the intestate's death.

1898 (2) The disclaimed interest passes according to any
1899 provision in the instrument creating the interest providing for
1900 the disposition of the interest, should it be disclaimed, or of
1901 disclaimed interests in general.

1902 (3) If the instrument does not contain a provision
1903 described in paragraph (2), the following rules apply:

1904 (A) If the disclaimant is not an individual, the
1905 disclaimed interest passes as if the disclaimant did not exist.

1906 (B) If the disclaimant is an individual, except as
1907 otherwise provided in subparagraphs (C) and (D), the disclaimed



1908 interest passes as if the disclaimant had died immediately before
1909 the time of distribution.

1910 (C) If by law or under the instrument, the
1911 descendants of the disclaimant would share in the disclaimed
1912 interest by any method of representation had the disclaimant died
1913 before the time of distribution, the disclaimed interest passes
1914 only to the descendants of the disclaimant who survive the time of
1915 distribution.

1916 (D) If the disclaimed interest would pass to the
1917 disclaimant's estate had the disclaimant died before the time of
1918 distribution, the disclaimed interest instead passes by
1919 representation to the descendants of the disclaimant who survive
1920 the time of distribution. If no descendant of the disclaimant
1921 survives the time of distribution, the disclaimed interest passes
1922 to those persons, including the state but excluding the
1923 disclaimant, and in such shares as would succeed to the
1924 transferor's intestate estate under the intestate succession law
1925 of the transferor's domicile had the transferor died at the time
1926 of distribution. However, if the transferor's surviving spouse is
1927 living but is remarried at the time of distribution, the
1928 transferor is deemed to have died unmarried at the time of
1929 distribution.

1930 (4) Upon the disclaimer of a preceding interest, a
1931 future interest held by a person other than the disclaimant takes
1932 effect as if the disclaimant had died or ceased to exist



1933 immediately before the time of distribution, but a future interest
1934 held by the disclaimant is not accelerated in possession or
1935 enjoyment.

1936 **SECTION 73.** The following shall be codified as Section
1937 89-22-13, Mississippi Code of 1972:

1938 89-22-13. **Disclaimer of rights of survivorship in jointly**

1939 **held property.** (a) Upon the death of a holder of jointly held
1940 property, a surviving holder may disclaim, in whole or in part,
1941 the incremental portion of the jointly held property devolving to
1942 the surviving holder by right of survivorship.

1943 (b) A disclaimer under subsection (a) of this section takes
1944 effect as of the death of the holder of jointly held property to
1945 whose death the disclaimer relates.

1946 (c) If a disclaimer is made under subsection (a) of this
1947 section with only one (1) holder surviving the death of the holder
1948 to whose death the disclaimer relates, the incremental portion
1949 disclaimed shall, as a consequence of the disclaimer, pass as part
1950 of the estate of the deceased holder.

1951 (d) If a disclaimer is made under subsection (a) of this
1952 section with two (2) or more of the holders surviving the death of
1953 the holder to whose death the disclaimer relates:

1954 (1) The disclaimer does not sever the joint tenancy
1955 with respect to the jointly held property as among the surviving
1956 holders;



1957 (2) The incremental portion disclaimed, as a
1958 consequence of a disclaimer, devolves to the surviving holders in
1959 proportion to their respective interests in the jointly held
1960 property excluding the disclaimant and any other surviving holder
1961 who disclaims to the extent of his, her or its disclaimer of the
1962 incremental portion;

1963 (3) An incremental portion devolving to a surviving
1964 holder, as a consequence of one or more disclaimers, may be
1965 disclaimed by the surviving holder;

1966 (4) To the extent that all of the surviving holders
1967 disclaim an incremental portion devolving to them, the portion
1968 shall instead pass as part of the estate of the deceased holder;
1969 and

1970 (5) The proportion of each of the surviving holders
1971 with respect to the jointly held property shall be adjusted to
1972 take into account the devolution of the incremental portion to the
1973 extent that the portion is disclaimed.

1974 **SECTION 74.** The following shall be codified as Section
1975 89-22-15, Mississippi Code of 1972:

1976 89-22-15. **Disclaimer of property held as tenants by the**
1977 **entirety.** (a) The survivorship interest in property held as a
1978 tenancy by the entirety to which the survivor succeeds by
1979 operation of law upon the death of the cotenant may be disclaimed
1980 as provided in this chapter. For purposes of this chapter only,
1981 the deceased tenant's interest in property held as a tenancy by



1982 the entirety shall be deemed to be an undivided one-half (1/2)
1983 interest.

1984 (b) A disclaimer under subsection (a) takes effect as of the
1985 death of the deceased tenant to whose death the disclaimer
1986 relates.

1987 (c) The survivorship interest in property held as a tenancy
1988 by the entirety disclaimed by the surviving tenant passes as if
1989 the disclaimant had predeceased the tenant to whose death the
1990 disclaimer relates.

1991 **SECTION 75.** The following shall be codified as Section
1992 89-22-17, Mississippi Code of 1972:

1993 89-22-17. **Disclaimer of interest by trustee.** (a) If a
1994 trustee disclaims an interest in property that otherwise would
1995 have become trust property:

1996 (1) The interest does not become trust property;

1997 (2) The disclaimer:

1998 (A) Takes effect as of the time the trust became
1999 irrevocable; and

2000 (B) Relates back for all purposes to the time the
2001 trust became irrevocable; and

2002 (3) The disclaimed interest is not subject to the
2003 claims of any creditor of the trustee, the trust, or any trust
2004 beneficiary.

2005 (b) If the instrument creating the disclaimed interest
2006 contains a provision that provides for the disposition of the



2007 interest if the interest were to be disclaimed, the disclaimed
2008 interest passes according to that provision.

2009 (c) If the instrument creating the disclaimed interest does
2010 not contain a provision described by subsection (b), the
2011 disclaimed interest passes as if:

2012 (1) All of the current beneficiaries, presumptive
2013 remainder beneficiaries, and contingent beneficiaries of the trust
2014 affected by the disclaimer who are individuals who died before the
2015 trust became irrevocable; and

2016 (2) All beneficiaries of the trust affected by the
2017 disclaimer who are not individuals ceased to exist without
2018 successor organizations and without substitution of beneficiaries
2019 under the cy pres doctrine before the trust became irrevocable.

2020 (d) Subsection (c) applies only for purposes of determining
2021 the disposition of an interest in property disclaimed by a trustee
2022 that otherwise would have become trust property and applies only
2023 with respect to the trust affected by the disclaimer. Subsection
2024 (c) does not apply with respect to other trusts governed by the
2025 instrument and does not apply for other purposes under the
2026 instrument or under the laws of intestacy.

2027 **SECTION 76.** The following shall be codified as Section
2028 89-22-19, Mississippi Code of 1972:

2029 89-22-19. **Disclaimer of power of appointment or other power**
2030 **not held in fiduciary capacity.** If a holder disclaims a power of



2031 appointment or other power not held in a fiduciary capacity, the
2032 following rules apply:

2033 (1) If the holder has not exercised the power, the
2034 disclaimer takes effect as of the time the instrument creating the
2035 power becomes irrevocable.

2036 (2) If the holder has exercised the power and the
2037 disclaimer is of a power other than a presently exercisable
2038 general power of appointment, the disclaimer takes effect
2039 immediately after the last exercise of the power.

2040 (3) The instrument creating the power is construed as
2041 if the power expired when the disclaimer became effective.

2042 **SECTION 77.** The following shall be codified as Section
2043 89-22-21, Mississippi Code of 1972:

2044 89-22-21. **Disclaimer by appointee, object, or taker in**
2045 **default of exercise of power of appointment.** (a) A disclaimer of
2046 an interest in property by an appointee of a power of appointment
2047 takes effect as of the time the instrument by which the holder
2048 exercises the power becomes irrevocable.

2049 (b) A disclaimer of an interest in property by an object or
2050 taker in default of an exercise of a power of appointment takes
2051 effect as of the time the instrument creating the power becomes
2052 irrevocable.

2053 **SECTION 78.** The following shall be codified as Section
2054 89-22-23, Mississippi Code of 1972:



2055 89-22-23. **Disclaimer of power held in fiduciary capacity.**

2056 (a) If a fiduciary disclaims a power held in a fiduciary capacity
2057 which has not been exercised, the disclaimer takes effect as of
2058 the time the instrument creating the power becomes irrevocable.

2059 (b) If a fiduciary disclaims a power held in a fiduciary
2060 capacity which has been exercised, the disclaimer takes effect
2061 immediately after the last exercise of the power.

2062 (c) A disclaimer under this section is effective as to
2063 another fiduciary if the disclaimer so provides and the fiduciary
2064 disclaiming has the authority to bind the estate, trust, or other
2065 person for whom the fiduciary is acting.

2066 **SECTION 79.** The following shall be codified as Section
2067 89-22-35, Mississippi Code of 1972:

2068 89-22-35. **Delivery or filing.** (a) In this section,
2069 "beneficiary designation" means an instrument, other than an
2070 instrument creating a trust, naming the beneficiary of:

- 2071 (1) An annuity or insurance policy;
- 2072 (2) An account with a designation for payment on death;
- 2073 (3) A security registered in beneficiary form;
- 2074 (4) A pension, profit-sharing, retirement, or other
2075 employment-related benefit plan; or
- 2076 (5) Any other nonprobate transfer at death.

2077 (b) Subject to subsections (c) through (l), delivery of a
2078 disclaimer may be effected by personal delivery, first-class mail,
2079 or any other method likely to result in its receipt.



2080 (c) In the case of an interest created under the law of
2081 intestate succession or an interest created by will, other than an
2082 interest in a testamentary trust:

2083 (1) A disclaimer must be delivered to the personal
2084 representative of the decedent's estate; or

2085 (2) If no personal representative is then serving, it
2086 must be filed with a court having jurisdiction to appoint the
2087 personal representative.

2088 (d) In the case of an interest in a testamentary trust:

2089 (1) A disclaimer must be delivered to the trustee then
2090 serving, or if no trustee is then serving, to the personal
2091 representative of the decedent's estate; or

2092 (2) If no personal representative is then serving, it
2093 must be filed with a court having jurisdiction to enforce the
2094 trust.

2095 (e) In the case of an interest in an inter vivos trust:

2096 (1) A disclaimer must be delivered to the trustee then
2097 serving;

2098 (2) If no trustee is then serving, it must be filed
2099 with a court having jurisdiction to enforce the trust; or

2100 (3) If the disclaimer is made before the time the
2101 instrument creating the trust becomes irrevocable, it must be
2102 delivered to the settlor of a revocable trust or the transferor of
2103 the interest.



2104 (f) In the case of an interest created by a beneficiary
2105 designation which is disclaimed before the designation becomes
2106 irrevocable, the disclaimer must be delivered to the person making
2107 the beneficiary designation or to such person's legal
2108 representative.

2109 (g) In the case of an interest created by a beneficiary
2110 designation which is disclaimed after the designation becomes
2111 irrevocable, the disclaimer must be delivered to the person
2112 obligated to distribute the interest.

2113 (h) In the case of a disclaimer by a surviving holder of
2114 jointly held property or property held as tenants by the entirety,
2115 the disclaimer must be delivered to the person to whom the
2116 disclaimed interest passes.

2117 (i) In the case of a disclaimer by an object or taker in
2118 default of exercise of a power of appointment at any time after
2119 the power was created:

2120 (1) The disclaimer must be delivered to the holder of
2121 the power or to the fiduciary acting under the instrument that
2122 created the power; or

2123 (2) If no fiduciary is then serving, it must be filed
2124 with a court having authority to appoint the fiduciary.

2125 (j) In the case of a disclaimer by an appointee of a
2126 nonfiduciary power of appointment:



2127 (1) The disclaimer must be delivered to the holder, the
2128 personal representative of the holder's estate or to the fiduciary
2129 under the instrument that created the power; or

2130 (2) If no fiduciary is then serving, it must be filed
2131 with a court having authority to appoint the fiduciary.

2132 (k) In the case of a disclaimer by a fiduciary of a power
2133 over a trust or estate, the disclaimer must be delivered as
2134 provided in subsection (c), (d) or (e), as if the power disclaimed
2135 were an interest in property.

2136 (l) In the case of a disclaimer of a power by an agent, the
2137 disclaimer must be delivered to the principal or the principal's
2138 representative.

2139 **SECTION 80.** The following shall be codified as Section
2140 89-22-27, Mississippi Code of 1972:

2141 89-22-27. **When disclaimer barred or limited.** (a) A
2142 disclaimer is barred by a written waiver of the right to disclaim.

2143 (b) A disclaimer of an interest in property is barred if any
2144 of the following events occur before the disclaimer becomes
2145 effective:

2146 (1) The disclaimant accepts the interest sought to be
2147 disclaimed;

2148 (2) The disclaimant voluntarily assigns, conveys,
2149 encumbers, pledges, or transfers the interest sought to be
2150 disclaimed or contracts to do so; or



2151 (3) A judicial sale of the interest sought to be
2152 disclaimed occurs.

2153 (c) A disclaimer, in whole or part, of the future exercise
2154 of a power held in a fiduciary capacity is not barred by its
2155 previous exercise.

2156 (d) A disclaimer, in whole or part, of the future exercise
2157 of a power not held in a fiduciary capacity is not barred by its
2158 previous exercise unless the power is exercisable in favor of the
2159 disclaimant.

2160 (e) A disclaimer is barred or limited if so provided by law
2161 other than this chapter.

2162 (f) A disclaimer of a power over property which is barred by
2163 this section is ineffective. A disclaimer of an interest in
2164 property which is barred by this section takes effect as a
2165 transfer of the interest disclaimed to the persons who would have
2166 taken the interest under this chapter had the disclaimer not been
2167 barred.

2168 **SECTION 81.** The following shall be codified as Section
2169 89-22-29, Mississippi Code of 1972:

2170 89-22-29. **Tax-qualified disclaimer.** (a) Notwithstanding
2171 any other provision of this chapter, if as a result of a
2172 disclaimer or transfer, the disclaimed or transferred interest is
2173 treated under the provisions of Title 26 of the United States
2174 Code, as now or hereafter amended, or any successor statute
2175 thereto, and the regulations promulgated thereunder, as never



2176 having been transferred to the disclaimant, then the disclaimer or
2177 transfer is effective as a disclaimer under this chapter.

2178 (b) In order for a disclaimer made under the provisions of
2179 this chapter to be effective as a tax-qualified disclaimer under
2180 the provisions of Title 26 of the United States Code, the
2181 disclaimer must satisfy the conditions of Title 26, Section 2518
2182 of the United States Code, as now or hereafter amended, including
2183 the requirement that the disclaimer be made generally within nine
2184 (9) months from the day the interest being disclaimed was created.

2185 **SECTION 82.** The following shall be codified as Section
2186 89-22-31, Mississippi Code of 1972:

2187 89-22-31. **Recording of disclaimer.** (a) A disclaimer of an
2188 interest in or relating to real property does not provide
2189 constructive notice to all persons unless the disclaimer contains
2190 a legal description of the real property to which the disclaimer
2191 relates and unless the disclaimer is filed for recording in the
2192 office of the chancery clerk of the county or counties where the
2193 real property is located.

2194 (b) An effective disclaimer meeting the requirements of
2195 subsection (a) constitutes constructive notice to all persons from
2196 and after the time of filing.

2197 (c) Failure to file, record, or register the disclaimer does
2198 not affect its validity as between the disclaimant and persons to
2199 whom the property interest or power passes by reason of the
2200 disclaimer.



2201 **SECTION 83.** The following shall be codified as Section
2202 89-22-33, Mississippi Code of 1972:

2203 89-22-33. **Application to existing relationships.** Except as
2204 otherwise provided in Section 89-22-27, an interest in or power
2205 over property existing on the effective date of this chapter as to
2206 which the time for delivering or filing a disclaimer under law
2207 superseded by this chapter has not expired may be disclaimed after
2208 the effective date of this chapter.

2209 **SECTION 84.** The following shall be codified as Section
2210 89-22-29, Mississippi Code of 1972:

2211 89-22-29. **Uniformity of application and construction.** In
2212 applying and construing this uniform act, consideration must be
2213 given to the need to promote uniformity of the law with respect to
2214 its subject matter among states that enact it.

2215 **SECTION 85.** The following shall be codified as Section
2216 89-22-31, Mississippi Code of 1972:

2217 89-22-31. **Severability clause.** If any provision of this
2218 chapter or its application to any person or circumstance is held
2219 invalid, the invalidity does not affect other provisions or
2220 applications of this chapter which can be given effect without the
2221 invalid provision or application, and to this end the provisions
2222 of this chapter are severable.

2223 **SECTION 86.** Section 91-8-105, Mississippi Code of 1972, is
2224 amended as follows:



2225 91-8-105. (a) Except as otherwise provided in the terms of
2226 the trust, this chapter governs the duties and powers of a trustee
2227 or any other fiduciary under this chapter, relations among
2228 trustees and such other fiduciaries, and the rights and interests
2229 of a beneficiary. The terms of a trust may expand, restrict,
2230 eliminate, or otherwise vary the duties and powers of a trustee,
2231 any such other fiduciary, relations among any of them, and the
2232 rights and interests of a beneficiary; however, nothing contained
2233 in this subsection shall be construed to override or nullify the
2234 provisions of subsection (b). The rule of statutory construction
2235 that statutes in derogation of the common law are to be strictly
2236 construed shall have no application to this section. Except as
2237 restricted by subsection (b), pursuant to this section, courts
2238 shall give maximum effect to the principal of freedom of
2239 disposition and to the enforceability of trust instruments.

2240 (b) The terms of a trust prevail over any provision of this
2241 chapter except:

2242 (1) The requirements for creating a trust;

2243 (2) The duty of a trustee to act in good faith in
2244 accordance with the terms and purposes of the trust and the
2245 interests of the beneficiaries;

2246 (3) The requirement that a trust and its terms be for
2247 the benefit of its beneficiaries as the interests of such
2248 beneficiaries are defined under the terms of the trust, and that
2249 the trust have a purpose that is lawful and possible to achieve;



2250 (4) The power of the court to modify or terminate a
2251 trust under Sections 91-8-410 through 91-8-416;

2252 (5) The effect of a spendthrift provision and the
2253 rights of certain creditors and assignees to reach a trust as
2254 provided in * * * Article 5 of the Uniform Trust Code (Title 91,
2255 Chapter 8, Article 5, Mississippi Code of 1972);

2256 (6) The power of the court under Section 91-8-702 to
2257 require, dispense with, or modify or terminate a bond;

2258 (7) The power of the court under Section 91-8-708(b) to
2259 adjust a trustee's compensation specified in the terms of the
2260 trust which is unreasonably low or high;

2261 (8) Subject to subsection (d), the duty under Section
2262 91-8-813(b) to notify beneficiaries of an irrevocable trust
2263 (including anyone who holds a power of appointment) who have
2264 attained twenty-five (25) years of age that the trust has been
2265 established as set forth in * * * Section 91-8-813(b);

2266 (9) Subject to subsection (d), the duty under Section
2267 91-8-813(a) (1) and (2) to keep the beneficiaries (including anyone
2268 who holds a power of appointment) informed and to respond to the
2269 request of a beneficiary of an irrevocable trust for trustee's
2270 reports and other information reasonably related to the
2271 administration of the trust;

2272 (10) The effect of an exculpatory term under Section
2273 91-8-1008;



2274 (11) The rights under Sections 91-8-1010 through
2275 91-8-1013 of a person other than a trustee or beneficiary;
2276 (12) Periods of limitation for commencing a judicial
2277 proceeding;
2278 (13) The power of the court to take such action and
2279 exercise such jurisdiction as may be necessary in the interests of
2280 justice; and
2281 (14) The subject-matter jurisdiction of the court and
2282 venue for commencing a proceeding as provided in Sections 91-8-203
2283 and 91-8-204.

2284 (c) Any purpose enunciated as a material purpose of a trust
2285 in that trust's trust instrument shall be treated as a material
2286 purpose of that trust for all purposes of this chapter.

2287 (d) Notwithstanding subsection (b) (8) and (9) of this
2288 section, the duties of a trustee to give notice, information and
2289 reports under Section 91-8-813(a) and (b) may be waived or
2290 modified in the trust instrument or by the settlor of the trust,
2291 or a trust protector or trust advisor that holds the power to so
2292 direct, directs otherwise in a writing delivered to the trustee in
2293 any of the following ways:

2294 (1) By waiving or modifying such duties as to all
2295 qualified beneficiaries during the lifetime of the settlor or the
2296 settlor's spouse;



2297 (2) By specifying a different age at which a
2298 beneficiary or class of beneficiaries must be notified under
2299 Section 91-8-813(b); or

2300 (3) With respect to one or more of the beneficiaries,
2301 by designating a beneficiary surrogate to receive such notice,
2302 information and reports who will act in good faith to protect the
2303 interests of the beneficiary or beneficiaries.

2304 **SECTION 87.** Sections 27-10-1, 27-10-3, 27-10-5, 27-10-7,
2305 27-10-9, 27-10-11, 27-10-13, 27-10-15, 27-10-17, 27-10-19,
2306 27-10-21, 27-10-23 and 27-10-25, Mississippi Code of 1972, which
2307 constitute the Uniform Estate Tax Apportionment Act, are repealed.

2308 **SECTION 88.** Sections 89-21-1, 89-21-3, 89-21-5, 89-21-7,
2309 89-21-9, 89-21-11, 89-21-13, 89-21-15 and 89-21-17, Mississippi
2310 Code of 1972, which constitute the Uniform Disclaimer of Property
2311 Interests Act, are repealed.

2312 **SECTION 89.** Sections 91-9-501, 91-9-503, 91-9-505, 91-9-507,
2313 91-9-509 and 91-9-511, Mississippi Code of 1972, which constitute
2314 the Family Trust Preservation Act of 1998, are repealed.

2315 **SECTION 90.** Section 91-7-259, Mississippi Code of 1972,
2316 which provides for foreign fiduciaries and lawsuits and debts, is
2317 repealed.

2318 **SECTION 91.** Sections 91-8-501 through 91-8-508, Mississippi
2319 Code of 1972, constitute Article 5 of the Uniform Trust Code.

2320 **SECTION 92.** This act shall take effect and be in force from
2321 and after July 1, 2020.

