

**Adopted
AMENDMENT NO 1 PROPOSED TO**

House Bill No. 889

BY: Senator(s) Robertson

**Amend by striking all after the enacting clause and inserting
in lieu thereof the following:**

4 **SECTION 1. Modification or termination of noncharitable**
5 **irrevocable trust by consent.** (1) This section will apply to all
6 irrevocable trusts:

7 (a) Created by a person who is at the time of the
8 execution of an amendment in such trust a bona fide resident of
9 the State of Mississippi; or

10 (b) Managed by a trustee who at the time of the
11 execution of an amendment to such trust is a resident of the state
12 or is domiciled therein.

13 (2) (a) A noncharitable irrevocable trust may be modified
14 or terminated upon consent of the persons interested in the trust,
15 without court approval or intervention, even if the modification
16 or termination is inconsistent with a material purpose of the
17 trust.

18 (b) A noncharitable irrevocable trust may be terminated
19 upon consent of the beneficiaries if the court concludes that
20 continuance of the trust is not necessary to achieve any material
21 purpose of the trust. A noncharitable irrevocable trust may be
22 modified upon consent of all the beneficiaries if the court

23 concludes that modification is not inconsistent with a material
24 purpose of the trust.

25 (c) A spendthrift provision in the terms of the trust
26 is not presumed to constitute a material purpose of the trust.

27 (d) Upon termination of a trust under paragraph (a) or
28 (b), the trustee shall distribute the trust property as agreed by
29 the beneficiaries.

30 (e) If not all of the beneficiaries consent to a
31 proposed modification or termination of the trust under paragraph
32 (a) or (b), the modification or termination may be approved by the
33 court if the court is satisfied that:

34 (i) If all of the beneficiaries had consented, the
35 trust could have been modified or terminated under this section;
36 and

37 (ii) The interests of a beneficiary who does not
38 consent will be adequately protected.

39 (f) "Persons interested in the trust" means the
40 trustor, if living, all persons beneficially interested in the
41 trust, persons holding powers over the trust assets and any
42 trustee of the trust.

43 (3) (a) In all cases subject to this section, any amendment
44 shall be reduced to writing and shall be signed by the trustor,
45 the trustee, the living adult beneficiaries and the special
46 representatives named, if any, and filed in the same place as the
47 original trust instrument.

48 (b) In the event any trust subject to this section
49 provides for a beneficiary, actual or contingent, whose interest
50 has not vested and is either mentally incompetent, a minor, an
51 unborn child or an unconceived child, then the trustor and
52 trustee, acting jointly, shall name a special representative to
53 represent the person.

54 (4) (a) The special representative so appointed shall
55 carefully consider the interests of the party or parties he is
56 appointed to represent and also consider any actual or apparent
57 conflict of interest which might exist between his own interest
58 and the party or parties he is then representing, and being
59 satisfied no such conflict exists and being further satisfied that
60 the proposed amendment does not adversely affect the interests of
61 the party or parties he represents, he then may give his consent
62 and execute the proposed amendment on behalf of the party or
63 parties.

64 (b) Before any appointment of a special representative,
65 both the trustor and the trustee shall give careful consideration
66 to the background, education, experience, general reputation,
67 occupation and lack of conflict of interest in the person
68 appointed as special representative.

69 (c) The special representative named shall be entitled
70 to reasonable compensation as well as recovery of reasonable
71 expenses.

72 (5) In all cases arising under subsection 3(b), the court
73 may appoint a guardian ad litem to represent the interests of
74 mental incompetents, minors, unborn children and unconceived
75 children who may be or become beneficiaries of the subject trust.
76 A certified copy of the court's decision if any amendment is
77 approved, may be recorded where the original trust was recorded.

78 (6) From and after approval by all necessary parties or
79 approval by the chancery court, as the case may be, the trust
80 shall be administered in accordance with the original trust as
81 amended by the parties or the court.

82 **SECTION 2.** This act shall take effect and be in force from
83 and after July 1, 2005.

**Further, amend by striking the title in its entirety and
inserting in lieu thereof the following:**

1 AN ACT TO PROVIDE FOR CONSENSUAL TERMINATION OF A
2 NONCHARITABLE IRREVOCABLE TRUST; AND FOR RELATED PURPOSES.