

By: Senator(s) Doty

To: Judiciary, Division A

SENATE BILL NO. 2211

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



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

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

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

54 91-8-103. In this chapter:

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

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

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

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



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

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

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

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

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

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

91 (9) "Distribution interest" means:



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

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

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

111 a. All income shall be distributed to a  
112 named beneficiary; or

113 b. One Hundred Thousand Dollars  
114 (\$100,000.00) a year shall be distributed to a named beneficiary;

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



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

121                   a. The trustee shall make distributions  
122 for health, education, maintenance, and support;

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

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

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

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



142 c. The trustee may make distributions  
143 for health, education, maintenance, and support;

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

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

151 f. A discretionary interest may also be  
152 evidenced by:

153 1. Permissive distribution language  
154 such as "may make distributions";

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

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

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



167 interest of the trust shall be divided and treated separately as  
168 follows:

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

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

174 c. The remaining trust property shall be  
175 held as a discretionary interest;

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

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

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

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

189 (B) The power or duty is granted or reserved to  
190 another person.

191 (12) "Fiduciary" means:



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

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

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

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

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

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

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





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

221           (18) "Power of appointment" means:

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

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

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

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

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

238                   (A) Is a distributee or permissible distributee of  
239 trust income or principal;



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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

288 91-8-105. (a) Except as otherwise provided in the terms of  
289 the trust, this chapter governs the duties and powers of a trustee



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

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

305 (1) The requirements for creating a trust;

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

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

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



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

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

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

324           (8) Subject to subsection (d), the duty under Section  
325 91-8-813(b) to notify beneficiaries of an irrevocable trust  
326 (including anyone who holds of a power of appointment) who have  
327 attained twenty-five (25) years of age that the trust has been  
328 established as set forth in that Section 91-8-813(b);

329           (9) Subject to subsection (d), the duty under Section  
330 91-8-813(a) (1) and (2) to keep the beneficiaries (including anyone  
331 who holds a power of appointment) informed and to respond to the  
332 request of a beneficiary of an irrevocable trust for trustee's  
333 reports and other information reasonably related to the  
334 administration of the trust;

335           (10) The effect of an exculpatory term under Section  
336 91-8-1008;

337           (11) The rights under Sections 91-8-1010 through  
338 91-8-1013 of a person other than a trustee or beneficiary;



339           (12) Periods of limitation for commencing a judicial  
340 proceeding;

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

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

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

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

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

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



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

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

369           91-8-303. To the extent there is no material conflict of  
370 interest between the representative and the person represented or  
371 among those being represented with respect to a particular  
372 question or dispute:

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

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

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

381           (4) A trustee may represent and bind the beneficiaries  
382 of the trust;

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

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



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

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

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

399 91-8-401. A trust may be created by:

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

404 (2) Declaration by the owner of property that the owner  
405 holds identifiable property as trustee;

406 (3) Exercise of a power of appointment in favor of a  
407 trustee; \* \* \*

408 (4) A court pursuant to its statutory or equitable  
409 powers; or

410 (5) \* \* \* By an agent or attorney-in-fact under a power  
411 of attorney that:





412                    (A) Expressly grants authority to create the  
413 trust; or

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

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

426            91-8-407. (a) Except as provided in subsection (b) and  
427 except as required by a statute other than this chapter, a trust  
428 need not be evidenced by a trust instrument, but the creation of  
429 an oral trust and its terms may be established only by clear and  
430 convincing evidence.

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



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

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

449 (A) The name of the trust;

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

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

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

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

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



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

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



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

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

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

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

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



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

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

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

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

523           91-8-409. Except as otherwise provided in Section 91-8-408,  
524 Section 41-43-51 or by another statute, the following rules apply:

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

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

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



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

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

542         91-8-411. (a) During the settlor's lifetime, a  
543 noncharitable irrevocable trust may be modified or terminated by  
544 the trustee upon consent of all qualified beneficiaries, even if  
545 the modification or termination is inconsistent with a material  
546 purpose of the trust if the settlor does not object to the  
547 proposed modification or termination. The trustee shall notify  
548 the settlor of the proposed modification or termination not less  
549 than sixty (60) days before initiating the modification or  
550 termination. The notice of modification or termination must  
551 include:

552                 (1) An explanation of the reasons for the proposed  
553 modification or termination;

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

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

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



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

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

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

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

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

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

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



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

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

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

592           91-8-703. (a) Cotrustees who are unable to reach a  
593 unanimous decision after consultation among all the cotrustees may  
594 act by majority decision.

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

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

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





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

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

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

618 (1) Prevent a cotrustee from committing a serious  
619 breach of trust; and

620 (2) Compel a cotrustee to redress a serious breach of  
621 trust.

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

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



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

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

642             91-8-814. (a) Relative to exercise of powers over  
643 discretionary and other interests:

644                 (1) "Improper motive" means to demonstrate action such  
645 as the following:

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

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

654                 (2) Unless otherwise provided in the trust:

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



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

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

663 (b) The following provisions apply only to discretionary  
664 interests:

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

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

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

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

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



683 (c) The following provisions apply only to mandatory or  
684 support interests:

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

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

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

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

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

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

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



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

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

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

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

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

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

722 91-8-1012. (a) A person other than a beneficiary who in  
723 good faith assists a trustee, or who in good faith and for value  
724 deals with a trustee, without actual knowledge that the trustee is  
725 exceeding or improperly exercising the trustee's powers is  
726 protected from liability as if the trustee properly exercised the  
727 power.

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



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

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

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

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

744 91-8-1201. (a) A trust protector or trust advisor is any  
745 person, and may be a committee of more than one (1) person, other  
746 than a trustee, who under the terms of the trust has a power or  
747 duty with respect to a trust, including, but not limited to, one  
748 or more of the following powers:

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

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



757 restricting the terms of the trust, the distribution of trust  
758 property, or the administration of the trust;

759 (3) The power to appoint a successor trust protector or  
760 trust advisor;

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

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

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

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

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

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

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

778 (11) The power to advise the trustee or cotrustee  
779 concerning any beneficiary;

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



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

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

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

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

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

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

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

800                   (20) The power to direct the trustee with respect to  
801 any additional powers and discretions over investment and  
802 management of trust assets provided in the trust instrument.

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





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

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

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

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

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

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



830 trust advisor to grant a beneficial interest in the trust to any  
831 noncharitable interest or purpose.

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

834 91-9-503. Except as provided in Section 91-9-509, if the  
835 trust instrument provides that a beneficiary's interest in income  
836 or principal or both of a trust is not subject to voluntary or  
837 involuntary transfer, the beneficiary's interest in income or  
838 principal or both under the trust may not be transferred and is  
839 not subject to the enforcement of a money judgment until paid to  
840 the beneficiary.

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

843 91-9-505. Except as provided in Section 91-9-509, if the  
844 trust instrument provides that the trustee shall pay income or  
845 principal or both of a trust for the education or support of a  
846 beneficiary, the beneficiary's interest in income or principal or  
847 both under the trust, to the extent the income or principal or  
848 both is necessary for the education or support of the beneficiary,  
849 may not be transferred and is not subject to the enforcement of a  
850 money judgment until paid to the beneficiary. This section shall  
851 not be applied or construed to limit or otherwise diminish a  
852 restraint on transfer that is valid under Section 91-9-503.

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



855           91-9-507. (1) Except as provided in Section 91-9-509, if  
856 the trust instrument provides that the trustee shall pay to or for  
857 the benefit of a beneficiary so much of the income or principal or  
858 both of a trust as the trustee in the trustee's discretion sees  
859 fit to pay, a transferee or creditor of the beneficiary may not  
860 compel the trustee to pay any amount from the trust that may be  
861 paid only in the exercise of the trustee's discretion. This  
862 subsection shall not be applied or construed to limit or otherwise  
863 diminish a restraint on transfer that is valid under Section  
864 91-9-503.

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

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



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

883 **SECTION 15.** The following shall be codified as Section  
884 91-9-509, Mississippi Code of 1972:

885 91-9-509. **Settlor as beneficiary of own trust; invalid**  
886 **restraint on transfers; payments for education or support at**  
887 **trustee's discretion; maximum amount accessible by transferees or**  
888 **creditors.** (1) Except as provided in Sections 91-9-701 through  
889 91-9-723, if the settlor is a beneficiary of a trust created by  
890 the settlor and the settlor's interest in the trust is subject to  
891 a provision restraining the voluntary or involuntary transfer of  
892 the settlor's interest, the restraint is invalid against  
893 transferees or creditors of the settlor. The invalidity of the  
894 restraint on transfer does not affect the validity of the trust.

895 (2) Except as provided in Sections 91-9-701 through  
896 91-9-723, if the settlor is a beneficiary of a trust created by  
897 the settlor and the trust instrument provides that the trustee  
898 shall pay income or principal, or both, of the trust for the  
899 education or support of the beneficiary, or gives the trustee  
900 discretion to determine the amount of income or principal, or  
901 both, of the trust to be paid to or for the benefit of the  
902 settlor, a transferee or creditor of the settlor may reach the  
903 maximum amount of the trust that the trustee could pay to or for  
904 the benefit of the settlor under the trust instrument, not



905 exceeding the amount of the settlor's proportionate contribution  
906 to the trust.

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

909         91-9-703. As used in this article, unless the context  
910 otherwise requires:

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

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

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

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

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

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



929 to or disapprove a \* \* \* trustee's actual or proposed  
930 investment \* \* \* decision.

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

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

936 (h) "Property" includes real property, personal property,  
937 and interests in real or personal property.

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

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

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

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



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

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

964           (3) Is not the transferor.

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

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

971           (1) As an owner of property;

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

976           (3) As a trustee.



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

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

982 (2) Is irrevocable; and

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

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

991 91-9-707. (a) Notwithstanding any law to the contrary, no  
992 action of any kind, including, but not limited to, an action to  
993 enforce a judgment entered by a court or other body having  
994 adjudicative authority, shall be brought at law or in equity for  
995 an attachment or other provisional remedy against property that is  
996 the subject of a qualified disposition or for the avoidance of a  
997 qualified disposition, unless the action is brought pursuant to  
998 the provisions of the Uniform Fraudulent Transfer Act, Section  
999 15-3-101 et seq., and \* \* \* unless the qualified disposition was  
1000 also made with actual intent to defraud the creditor.





1001 (b) (1) Notwithstanding Section 15-3-115, a creditor's  
1002 claim under subsection (a) shall be extinguished:

1003 (A) If the person is a creditor when the qualified  
1004 disposition to a qualified disposition trust is made, unless the  
1005 action is commenced within the later of two (2) years after the  
1006 qualified disposition is made or six (6) months after the person  
1007 discovers or reasonably should have discovered the qualified  
1008 disposition; or

1009 (B) If the person becomes a creditor after the  
1010 qualified disposition to a qualified disposition trust is made,  
1011 unless the action is commenced within two (2) years after the  
1012 qualified disposition is made;

1013 (2) If subsection (b)(1) applies:

1014 (A) A person shall be deemed to have discovered  
1015 the existence of a qualified disposition to a qualified  
1016 disposition trust at the time any public record is made of any  
1017 transfer of property relative to the qualified disposition,  
1018 including, but not limited to, the conveyance of real property  
1019 that is recorded in the office of the chancery clerk of the county  
1020 in which the property is located or the filing of a financing  
1021 statement under Chapter 9, Title 75, \* \* \* Mississippi Code of  
1022 1972, or the equivalent recording or filing of either with the  
1023 appropriate person or official under the laws of a jurisdiction  
1024 other than this state; and



1025                   (B) No creditor shall bring an action with respect  
1026 to property that is the subject of a qualified disposition unless  
1027 that creditor proves by clear and convincing evidence that the  
1028 settlor's transfer of the property was made with the intent to  
1029 defraud that specific creditor.

1030                   (c) For purposes of this article, a qualified disposition  
1031 that is made by means of a disposition by a transferor who is a  
1032 trustee shall be deemed to have been made as of the time, whether  
1033 before, on, or after July 1, 2014, the property that is the  
1034 subject of the qualified disposition was originally transferred to  
1035 the transferor acting in the capacity of trustee, or any  
1036 predecessor trustee, in a form that meets the requirements of  
1037 Section 91-9-703(n) (2) and (3).

1038                   (d) Notwithstanding any law to the contrary, a creditor,  
1039 including a creditor whose claim arose before or after a qualified  
1040 disposition, or any other person shall have only the rights with  
1041 respect to a qualified disposition as are provided in this section  
1042 and Section 91-9-711, and neither a creditor nor any other person  
1043 shall have any claim or cause of action against the trustee, an  
1044 advisor of a trust that is the subject of a qualified disposition,  
1045 or against any person involved in the counseling, drafting,  
1046 preparation, execution, or funding of a trust that is the subject  
1047 of a qualified disposition. For purposes of this section,  
1048 counseling, drafting, preparation, execution or funding of a trust  
1049 that is the subject of a qualified disposition includes the



1050 counseling, drafting, preparation, execution and funding of a  
1051 limited partnership or a limited liability company if interests in  
1052 the limited partnership or limited liability company are  
1053 subsequently transferred to the trust that is the subject of a  
1054 qualified disposition.

1055 (e) Notwithstanding any law to the contrary, no action of  
1056 any kind, including, but not limited to, an action to enforce a  
1057 judgment entered by a court or other body having adjudicative  
1058 authority, shall be brought at law or in equity against a trustee  
1059 or an advisor of a trust that is the subject of a qualified  
1060 disposition, or against any person involved in the counseling,  
1061 drafting, preparation, execution or funding of a trust that is the  
1062 subject of a qualified disposition, if, as of the date the action  
1063 is brought, an action by a creditor with respect to the qualified  
1064 disposition would be barred under this section.

1065 (f) In circumstances where more than one (1) qualified  
1066 disposition is made by means of the same qualified disposition  
1067 trust, then:

1068 (1) The making of a subsequent qualified disposition  
1069 shall be disregarded in determining whether a creditor's claim  
1070 with respect to a prior qualified disposition is extinguished as  
1071 provided in subsection (b); and

1072 (2) Any distribution to a beneficiary shall be deemed  
1073 to have been made from the latest qualified disposition.



1074 (g) If, in any action brought against a trustee of a trust  
1075 that is the result of a qualified disposition, a court takes any  
1076 action whereby the court declines to apply the law of this state  
1077 in determining the effect of a spendthrift provision of the trust,  
1078 the trustee of the trust shall immediately upon the court's action  
1079 and without the further order of any court, cease in all respects  
1080 to be trustee of the trust and a successor trustee shall succeed  
1081 as trustee in accordance with the terms of the trust or, if the  
1082 trust does not provide for a successor trustee and the trust would  
1083 otherwise be without a trustee, a court of this state, upon the  
1084 application of any beneficiary of the trust, shall appoint a  
1085 successor trustee upon the terms and conditions it determines to  
1086 be consistent with the purposes of the trust and this article.  
1087 Upon the trustee's ceasing to be trustee, the trustee shall have  
1088 no power or authority other than to convey the trust property to  
1089 the successor trustee named in the trust in accordance with this  
1090 section.

1091 (h) A trust that is the subject of a qualified disposition  
1092 shall be subject to this section whether or not the transferor  
1093 retains any or all of the powers and rights described in Section  
1094 91-9-709 or serves as an investment advisor pursuant to Section  
1095 91-9-717.

1096 (i) (1) Notwithstanding any provision of subsection (a) or  
1097 (b) to the contrary, the limitations on actions by creditors in  
1098 law or equity shall not apply and the creditors' claims shall not



1099 be extinguished if the transferor is indebted on account of an  
1100 agreement, judgment, or order of a court for the payment of one or  
1101 more of the following:

1102 (A) To any person to whom the transferor is  
1103 indebted on account of an agreement or order of court for the  
1104 payment of support or alimony in favor of the transferor's spouse,  
1105 former spouse or children, or for a division or distribution of  
1106 property in favor of the transferor's spouse or former spouse, but  
1107 only to the extent of such debt;

1108 (B) To any person who suffers death, personal  
1109 injury, or property damage on or before the date of a qualified  
1110 disposition by a transferor, if the death, personal injury, or  
1111 property damage is at any time determined to have been caused, in  
1112 whole or in part, by the tortious act or omission of either the  
1113 transferor or by another person for whom the transferor is or was  
1114 vicariously liable, but only to the extent of the claim against  
1115 the transferor or other person for whom the transferor is or was  
1116 vicariously liable;

1117 (C) To the State of Mississippi or any political  
1118 subdivision thereof, including, but not limited to, court-ordered  
1119 restitution in a criminal matter; or

1120 (D) To any creditor in an amount not to exceed One  
1121 Million Five Hundred Thousand Dollars (\$1,500,000.00) if the  
1122 transferor failed to maintain a One Million Dollar (\$1,000,000.00)  
1123 umbrella policy as required by subsection (1).



1124                   (2) (A) A claim provided under this subsection (i)  
1125 shall be asserted against a trustee only:

1126                               (i) Upon a final nonappealable determination  
1127 of a Mississippi court or a fully domesticated, final  
1128 nonappealable order of a court of another state that the debt is  
1129 past due; and

1130                               (ii) After the court has determined that the  
1131 claimant has made reasonable attempts to collect the debt from any  
1132 other sources of the transferor or that any attempt would be  
1133 futile.

1134                               (B) Nothing in this subsection (i) (2) shall be  
1135 construed to prohibit the court from making the findings required  
1136 in subsection (i) (2) (A) in the same proceeding and order.

1137                   (j) Subsection (i) shall not apply to any claim for forced  
1138 heirship, legitime or elective share.

1139                   (k) In addition to provisions of subsection (j), to the  
1140 extent subsection (j) applies to the laws of any foreign country:

1141                               (1) Neither a qualified disposition trust nor any  
1142 disposition made subject to the terms of the qualified disposition  
1143 trust is subject to the laws of any foreign country, nor is any  
1144 such qualified disposition trust or the disposition void,  
1145 voidable, liable to be set aside, or defective in any manner for  
1146 any reason including, but not limited to:



1147                   (A) The law of any foreign country prohibits or  
1148 does not recognize the concept of a qualified disposition trust;  
1149 or

1150                   (B) The qualified disposition trust or disposition  
1151 avoids or defeats any right, claim, or interest conferred by the  
1152 law of a foreign country upon any person by reason of a personal  
1153 relationship to the settlor or by way of heirship rights or  
1154 contravenes any rule or law of a foreign country or any foreign  
1155 country's judicial or administrative order or action intended to  
1156 recognize, protect, enforce, or give effect to the right, claim,  
1157 or interest.

1158                   (2) Relative to any foreign country or any interest in  
1159 property arising or originating under the laws of any foreign  
1160 country:

1161                   (A) No form of forced heirship, legitime, forced  
1162 share or any similar heirship rights or form of transmission or  
1163 transfer of property from a decedent or from a living person, or  
1164 any restrictions on transmission or transfer of property from a  
1165 decedent or a living person is recognized by this state; or

1166                   (B) No heirship rights described in subsection  
1167 (k) (2) (A) conferred under the law of a foreign country shall  
1168 constitute an obligation or liability, the transfer, conveyance or  
1169 devise of which, would violate Chapter 3, Title 15, \* \* \*  
1170 Mississippi Code of 1972; and



1171 (C) Subsection (k)(1) shall apply to all realty or  
1172 other forms of immovable property physically in this state, as  
1173 well as to all personal or movable property wherever situated if  
1174 owned by a qualified disposition trust containing a state  
1175 jurisdiction provision designating that the law of this state  
1176 controls the qualified disposition trust;

1177 (3) No judgment or other holding of any judicial body  
1178 of any foreign country, including, but not limited to, any court,  
1179 administrative body or other entity or organization purportedly  
1180 having the power to make judicial or administrative decisions of  
1181 any foreign country, shall be recognized or enforced or give rise  
1182 to any equitable forms of relief, including, but not limited to,  
1183 estoppel, to the extent the judgment or other holding concerns a  
1184 qualified disposition trust containing a state jurisdiction  
1185 provision designating that the law of this state controls the  
1186 qualified disposition trust or to the extent the judgment or other  
1187 holding concerns property held by the qualified disposition trust.

1188 (4) Subsection (a) applies in addition to all other  
1189 provisions of this article.

1190 (1) The transferor shall obtain a general liability policy  
1191 and, if applicable, a professional liability policy, and each  
1192 policy must have a policy limit of at least One Million Dollars  
1193 (\$1,000,000.00). Policy premiums must be paid by the transferor.

1194 **SECTION 18.** This act shall take effect and be in force from  
1195 and after July 1, 2014.

