

Senate Bill No. 190

(By Senators Jenkins, Snyder, Browning, Palumbo,
Sypolt, Wells, Plymale, Minard and Klempa)

**Interim
Bill**

[Introduced January 18, 2011; referred to the Committee on the
Judiciary.]

A BILL to repeal §36-1-4, §36-1-6, §36-1-17 and §36-1-18 of the Code of West Virginia, 1931, as amended; to repeal §44-5-12, §44-5-13, §44-5-14 and §44-5-15 of said code; to repeal §44-6-2a of said code; to repeal §44-14-1, §44-14-2, §44-14-3, §44-14-4 and §44-14-5 of said code; to amend and reenact §38-1-13 of said code; to amend said code by adding thereto a new section, designated §44-4-22; to amend and reenact §44-5-1, §44-5-7 and §44-5-11 of said code; to amend and reenact §44-5A-2, §44-5A-3 and §44-5A-4 of said code; to amend said code by adding thereto three new sections, designated §44-5A-5, §44-5A-6 and §44-5A-7; to amend and reenact §44-6-1 and §44-6-2 of said code; to amend said code by adding thereto a new section, designated §44-6-11; to amend and reenact

1 §44-6C-1, §44-6C-2 and §44-6C-9 of said code; to amend and
2 reenact §44-7-1 of said code; to amend said code by adding
3 thereto a new section, designated §44-7-4; and to amend said
4 code by adding thereto a new chapter, designated §44D-1-101,
5 §44D-1-102, §44D-1-103, §44D-1-104, §44D-1-105, §44D-1-106,
6 §44D-1-107, §44D-1-108, §44D-1-109, §44D-1-110, §44D-1-111,
7 §44D-1-112, §44D-1-113, §44D-2-201, §44D-2-202, §44D-2-203,
8 §44D-2-204, §44D-3-301, §44D-3-302, §44D-3-303, §44D-3-304,
9 §44D-3-305, §44D-4-401, §44D-4-402, §44D-4-403, §44D-4-404,
10 §44D-4-405, §44D-4-406, §44D-4-407, §44D-4-408, §44D-4-409,
11 §44D-4-410, §44D-4-411, §44D-4-412, §44D-4-413, §44D-4-414,
12 §44D-4-415, §44D-4-416, §44D-4-417, §44D-5-501, §44D-5-502,
13 §44D-5-503, §44D-5-504, §44D-5-505, §44D-5-506, §44D-5-507,
14 §44D-6-601, §44D-6-602, §44D-6-603, §44D-6-604, §44D-7-701,
15 §44D-7-702, §44D-7-703, §44D-7-704, §44D-7-705, §44D-7-706,
16 §44D-7-707, §44D-7-708, §44D-7-709, §44D-8-801, §44D-8-802,
17 §44D-8-803, §44D-8-804, §44D-8-805, §44D-8-806, §44D-8-807,
18 §44D-8-808, §44D-8-809, §44D-8-810, §44D-8-811, §44D-8-812,
19 §44D-8-813, §44D-8-814, §44D-8-815, §44D-8-816, §44D-8-817,
20 §44D-9-901, §44D-10-1001, §44D-10-1002, §44D-10-1003,
21 §44D-10-1004, §44D-10-1005, §44D-10-1006, §44D-10-1007,
22 §44D-10-1008, §44D-10-1009, §44D-10-1010, §44D-10-1011,

1 §44D-10-1012, §44D-10-1013, §44D-11-1101, §44D-11-1102,
2 §44D-11-1103, §44D-11-1104 and §44D-11-1105, all relating
3 generally to estates and trusts and their administration;
4 providing that certain provisions of current law have no
5 effect after specified date; providing certain provisions of
6 current law are not to apply to trusts and trustees after
7 specified date; changing names of certain articles of existing
8 code; providing for the creation, administration, revision and
9 termination of trusts; providing for trustees, powers and
10 duties of trustees and substitution of trustees; providing for
11 distribution of trust assets; specifying powers and certain
12 restrictions on powers of fiduciaries; amending the Uniform
13 Prudent Investor Act; modernizing language of certain existing
14 sections of code and deleting obsolete language; adopting West
15 Virginia Uniform Trust Code; providing general provisions and
16 definitions; providing for judicial proceedings; providing for
17 representation of trusts; providing for creation, validity,
18 modification and termination of trusts; providing for
19 creditors' claims; providing for spendthrift trusts,
20 discretionary trusts and revocable trusts; providing for the
21 office of trustee; providing duties and powers of trustees;
22 providing for liability of trustees and rights of persons

1 dealing with trustees; providing various miscellaneous
2 provisions for trusts and trustees; specifying delayed
3 effective date for West Virginia Uniform Trust Code; and
4 providing rules for application of that date.

5 *Be it enacted by the Legislature of West Virginia:*

6 That §36-1-4, §36-1-6, §36-1-17 and §36-1-18 of the Code of
7 West Virginia, 1931, as amended, be repealed; that §44-5-12,
8 §44-5-13, §44-5-14 and §44-5-15 be repealed; that §44-6-2a be
9 repealed; that §44-14-1, §44-14-2, §44-14-3, §44-14-4 and §44-14-5
10 be repealed; that §38-1-13 of said code be amended and reenacted;
11 that said code be amended by adding thereto a new section,
12 designated §44-4-22; that §44-5-1, §44-5-7 and §44-5-11 of said
13 code be amended and reenacted; that §44-5A-2, §44-5A-3 and §44-5A-4
14 of said code be amended and reenacted; that said code be amended
15 by adding thereto three new sections, designated §44-5A-5, §44-5A-6
16 and §44-5A-7; that §44-6-1 and §44-6-2 of said code be amended and
17 reenacted; that said code be amended by adding thereto a new
18 section, designated §44-6-11; that §44-6C-1, §44-6C-2 and §44-6C-9
19 of said code be amended and reenacted; that §44-7-1 of said code be
20 amended and reenacted; that said code be amended by adding thereto
21 a new section, designated §44-7-4; and that said code be amended by
22 adding thereto a new chapter, designated §44D-1-101, §44D-1-102,

1 §44D-1-103, §44D-1-104, §44D-1-105, §44D-1-106, §44D-1-107,
2 §44D-1-108, §44D-1-109, §44D-1-110, §44D-1-111, §44D-1-112,
3 §44D-1-113, §44D-2-201, §44D-2-202, §44D-2-203, §44D-2-204,
4 §44D-3-301, §44D-3-302, §44D-3-303, §44D-3-304, §44D-3-305,
5 §44D-4-401, §44D-4-402, §44D-4-403, §44D-4-404, §44D-4-405,
6 §44D-4-406, §44D-4-407, §44D-4-408, §44D-4-409, §44D-4-410,
7 §44D-4-411, §44D-4-412, §44D-4-413, §44D-4-414, §44D-4-415,
8 §44D-4-416, §44D-4-417, §44D-5-501, §44D-5-502, §44D-5-503,
9 §44D-5-504, §44D-5-505, §44D-5-506, §44D-5-507, §44D-6-601,
10 §44D-6-602, §44D-6-603, §44D-6-604, §44D-7-701, §44D-7-702,
11 §44D-7-703, §44D-7-704, §44D-7-705, §44D-7-706, §44D-7-707,
12 §44D-7-708, §44D-7-709, §44D-8-801, §44D-8-802, §44D-8-803,
13 §44D-8-804, §44D-8-805, §44D-8-806, §44D-8-807, §44D-8-808,
14 §44D-8-809, §44D-8-810, §44D-8-811, §44D-8-812, §44D-8-813,
15 §44D-8-814, §44D-8-815, §44D-8-816, §44D-8-817, §44D-9-901,
16 §44D-10-1001, §44D-10-1002, §44D-10-1003, §44D-10-1004,
17 §44D-10-1005, §44D-10-1006, §44D-10-1007, §44D-10-1008,
18 §44D-10-1009, §44D-10-1010, §44D-10-1011, §44D-10-1012,
19 §44D-10-1013, §44D-11-1101, §44D-11-1102, §44D-11-1103,
20 §44D-11-1104 and §44D-11-1105, all to read as follows:

21 **CHAPTER 38. LIENS.**
22 **ARTICLE 1. VENDOR'S AND TRUST DEED LIENS.**

1 ~~§38-1-13. Applicability of article 14 of chapter 44 Substitution~~
2 ~~of trustees under a trust deed securing a debt.~~

3 ~~In cases not specifically provided for in this article, the~~
4 ~~provisions of article fourteen, chapter forty-four, of this code~~
5 ~~shall be applicable to trustees mentioned in this article.~~

6 ~~(a) When a trust deed to secure a debt or obligation does not~~
7 ~~by its terms prescribe a method for substitution, the party secured~~
8 ~~by the trust deed, or any surety indemnified by the deed, or the~~
9 ~~assignee or personal representative of any secured party or surety~~
10 ~~may, if there is a death, removal, declination, resignation,~~
11 ~~refusal or inability of the original trustee or trustees named in~~
12 ~~the instrument, substitute a trustee or trustees in his or her, or~~
13 ~~its place by a writing duly signed and acknowledged and recorded in~~
14 ~~the office of the clerk of the county commission where the real~~
15 ~~estate covered by the trust deed is situate.~~

16 ~~(b) When a substitution is made under this section of a~~
17 ~~trustee or trustees of a trust deed securing a debt or obligation,~~
18 ~~the substitution is effected when the party secured, or a surety~~
19 ~~indemnified by the deed, or the assignee or personal representative~~
20 ~~of any such secured party or surety has deposited true copies of~~
21 ~~the notice of the substitution in the United States mail, first~~
22 ~~class postage prepaid, addressed to the last known addresses of the~~

1 grantor or grantors or any other person owing the debt or
2 obligation, and to the trustee or trustees, and has presented the
3 original of the notice to the clerk of the county commission in
4 whose office the trust deed is recorded, causing the notice to be
5 recorded and indexed in a general lien book or other appropriate
6 book in which trust deeds or assignments of trust deeds are
7 recorded. There shall be appended to the notice presented for
8 recording a certificate by the party making the substitution,
9 certifying that copies of the notice were mailed as required by
10 this subsection, and showing the date of the mailing.

11 (c) It is not necessary to give notice under this section to
12 a trustee who has removed from the state, declined to accept the
13 trust, refused to act as trustee, or has resigned, or to the
14 personal representative of one who has died.

15 **CHAPTER 44. ADMINISTRATION OF ESTATES AND TRUSTS.**

16 **ARTICLE 4. ACCOUNTING BY PERSONAL REPRESENTATIVES.**

17 **§44-4-22. Application only to personal representatives, guardians,**
18 **curators or committees.**

19 The provisions of this article apply only to personal
20 representatives, guardians, curators or committees, as the case may
21 be, and do not apply to or affect trustees who are governed by the
22 provisions of the West Virginia Uniform Trust Code in chapter

1 forty-four-d of this code.

2 **ARTICLE 5. GENERAL PROVISIONS AS TO PERSONAL REPRESENTATIVES.**

3 **§44-5-1. List of fiduciaries.**

4 (a) The clerk of the county commission of each county shall
5 keep a record, to be known as the "Record of Fiduciaries," in which
6 he or she shall enter, in separate columns, first, the name of
7 every fiduciary authorized to act as such by ~~such~~ the county
8 commission or clerk ~~thereof~~ of the county commission; secondly, the
9 name of the decedent for whose estate he or she is personal
10 representative or curator; thirdly, the names of the distributees
11 of ~~such~~ the estate, showing their relation to the decedent;
12 fourthly, the name of the living person or persons for whom he or
13 she is minor guardian, curator, committee or trustee; fifthly, the
14 penalty of his or her bond; sixthly, the names of his or her
15 sureties; seventhly, the date of the order conferring his or her
16 authority, and a reference to the book and page where entered;
17 eighthly, the date of any order revoking his or her authority, and
18 a reference to the book and page where entered; ninthly, the date
19 of the return of every inventory and appraisement of the estate;
20 tenthly, the date of the confirmation of each report of settlement
21 of the accounts of ~~such~~ the fiduciary; and the clerk shall index
22 ~~such~~ the record in the name of the decedent, estate, ward or person

1 represented by ~~such~~ the fiduciary. Any clerk failing to make ~~such~~
 2 entry, as to any fiduciary, within ten days after the order
 3 conferring or revoking the authority, or the date of the return of
 4 ~~such~~ the inventory and/or appraisal, or the date of the
 5 confirmation of any report of settlement, shall, for every ~~such~~
 6 failure, forfeit \$20.

7 (b) This section does not apply to a trustee.

8 **§44-5-7. Authority of personal representatives to compound and**
 9 **compromise liabilities due to or from them.**

10 It ~~shall be~~ is lawful for any guardian, committee or trustee,
 11 to compound and compromise any liability due to or from him or her,
 12 ~~provided that such~~ unless the compounding and compromise ~~be~~ is
 13 ratified and approved by a court ~~of equity~~ of competent
 14 jurisdiction, all parties in interest being before the court by
 15 proper process. When ~~such~~ the compounding and compromise has been
 16 ~~so~~ ratified and approved, it ~~shall be~~ is binding on all parties in
 17 interest before the court. It ~~shall be~~ is lawful for any personal
 18 representative to compound and compromise any liability due to or
 19 from him ~~provided that~~ or her, as long as the compounding and
 20 compromise is ratified and approved by the fiduciary commissioner
 21 to whom the estate or trust has been referred, or by a commissioner
 22 ~~in chancery~~ appointed by the circuit court when the estate of the

1 decedent is being settled in a chancery suit, and is reported by
2 the fiduciary commissioner to his or her court. When the report is
3 confirmed, the compounding and compromise shall be binding on all
4 parties to the proceedings.

5 ~~§44-5-11. Designation of testamentary trustee as beneficiary of~~
6 ~~insurance Application only to personal representatives,~~
7 ~~curators, and minor guardians.~~

8 ~~A policy of life insurance may designate as beneficiary a~~
9 ~~trustee or trustees named or to be named by will, if the~~
10 ~~designation is made in accordance with the provisions of the policy~~
11 ~~and the requirements of the insurer. The proceeds of such~~
12 ~~insurance shall be paid to the trustee or trustees to be held and~~
13 ~~disposed of under the terms of the will as they exist at the death~~
14 ~~of the testator; but if no trustee or trustees make claim to the~~
15 ~~proceeds from the insurance company within one year after the death~~
16 ~~of the insured, or if satisfactory evidence is furnished the~~
17 ~~insurance company within such one year period showing that no~~
18 ~~trustee can qualify to receive the proceeds, payment shall be made~~
19 ~~by the insurance company to the executors, administrators or~~
20 ~~assigns of the insured, unless otherwise provided by agreement with~~
21 ~~the insurance company during the lifetime of the insured. The~~
22 ~~proceeds of the insurance as collected by the trustee or trustees~~

~~1 shall not be subject to debts of the insured or to inheritance tax
2 to any greater extent than if such proceeds were payable to any
3 other named beneficiary other than the estate of the insured, and
4 shall not be considered as payable to the estate of the insured for
5 any purpose. Such insurance proceeds so held in trust may be
6 commingled with any other assets which may properly come into such
7 trust as provided in the will. Enactment of this section shall not
8 invalidate previous life insurance policy designations naming
9 trustees of trusts established by will.~~

10 The provisions of this article apply only to personal
11 representatives, curators, and minor guardians, as the case may be,
12 and do not apply to or affect guardians and conservators of adult
13 protected persons who are governed by the provisions of the
14 Guardian and Conservatorship Act in chapter forty-four-a of this
15 code or trustees who are governed by the provisions of the West
16 Virginia Uniform Trust Code in chapter forty-four-d of this code.

17 ARTICLE 5A. POWERS OF FIDUCIARIES.

**18 §44-5A-2. Incorporation by reference of enumerated powers by
19 testator; restriction on exercise of powers.**

~~20 (a) By an express intention of the testator or settlor so to
21 do contained in a will, or in an instrument in writing whereby a
22 trust estate is created inter vivos, any or all of the powers or~~

1 ~~any portion thereof enumerated in section three of this article, as~~
2 ~~they exist at the time of the signing of the will by the testator~~
3 ~~or at the time of the signing by the first settlor who signs the~~
4 ~~trust instrument, may be, by appropriate reference made thereto,~~
5 ~~incorporated in such will or other written instrument, with the~~
6 ~~same effect as though such language were set forth verbatim in the~~
7 ~~instrument. Incorporation of one or more of the powers contained~~
8 ~~in section three of this article by reference to that section shall~~
9 ~~be in addition to and not in limitation of the common law or~~
10 ~~statutory powers of the fiduciary~~ After June 30, 2011, by an
11 intention of the testator expressed in a will, any or all of the
12 powers or any portion of the powers enumerated in section three of
13 this article, as they exist at the time of the signing of the will
14 by the testator may be, by appropriate reference made thereto,
15 incorporated in the will, with the same effect as though the
16 language were set forth verbatim in the instrument. Incorporation
17 of one or more of the powers contained in section three of this
18 article by reference to that section is in addition to and not in
19 limitation of the common law or statutory powers of the fiduciary.

20 (b) No power of authority conferred upon a fiduciary as
21 provided in this article may be exercised by ~~such~~ the fiduciary in
22 ~~such~~ a manner as, in the aggregate, to deprive the trust or the

1 estate involved of an otherwise available tax exemption, deduction
2 or credit, expressly including the marital deduction, or operate to
3 impose a tax upon a donor or testator or other person as owner of
4 any portion of the trust or estate involved. "Tax" includes, but
5 is not limited to, any federal, state, or local income, gift,
6 estate or inheritance tax.

7 (c) Nothing ~~herein shall be construed to prevent~~ in this
8 section prevents the incorporation of the powers enumerated in
9 section three of this article in any other kind of instrument or
10 agreement.

11 **§44-5A-3. Powers which may be incorporated by reference in trust**
12 **instrument.**

13 The following powers may be incorporated by reference by a
14 testator in the will as provided in section two of this article
15 and the following powers apply without the need for incorporation
16 by reference to trustees who are governed by the provisions of the
17 West Virginia Uniform Trust Code in chapter forty-four-d of this
18 code:

19 (a) *Retain original property.* -- To retain for ~~such~~ the time
20 ~~as~~ the fiduciary considers advisable any property, real or
21 personal, which the fiduciary may receive, even though the
22 retention of ~~such~~ the property by reason of its character, amount,

1 proportion to the total estate or otherwise would not be
2 appropriate for the fiduciary apart from this provision.

3 (b) *Sell and exchange property.* -- To sell, exchange, give
4 options upon, partition or otherwise dispose of any property or
5 interest therein which the fiduciary may hold from time to time,
6 with or without order of court, at public or private sale or
7 otherwise, upon ~~such~~ the terms and conditions, including credit,
8 and for ~~such~~ the consideration ~~as~~ the fiduciary considers
9 advisable, and to transfer and convey the property or interest
10 therein which is at the disposal of the fiduciary, in fee simple
11 absolute or otherwise, free of all trust; and the party dealing
12 with the fiduciary is not under a duty to follow the proceeds or
13 other consideration received by the fiduciary from ~~such~~ the sale or
14 exchange.

15 (c) *Invest and reinvest.* -- To invest and reinvest, as the
16 fiduciary considers advisable, in stocks (common or preferred),
17 bonds, debentures, notes, mortgages or other securities, in or
18 outside the United States; in insurance contracts on the life of
19 any beneficiary or of any person in whom a beneficiary has an
20 insurable interest, or in annuity contracts for any beneficiary, in
21 any real or personal property, in investment trusts; in
22 participations in common trust funds, and generally in ~~such~~

1 property ~~as~~ the fiduciary considers advisable, even though ~~such~~ the
2 investment is not of the character approved by applicable law but
3 for this provision.

4 (d) *Invest without diversification.* -- To make investments
5 which cause a greater proportion of the total property held by the
6 fiduciary to be invested in investments of one type or of one
7 company than would be considered appropriate for the fiduciary
8 apart from this provision.

9 (e) *Continue business.* -- To the extent and upon ~~such~~ terms
10 and conditions and for ~~such~~ the periods ~~of time~~ as the fiduciary
11 considers necessary or advisable, to continue or participate in the
12 operation of any business or other enterprise, whatever its form of
13 organization, including, but not limited to, the power:

14 (1) To effect incorporation, dissolution, or other change in
15 the form of the organization of the business or enterprise;

16 (2) To dispose of any interest therein or acquire the interest
17 of others therein;

18 (3) To contribute thereto or invest therein additional capital
19 or to lend money thereto, in any ~~such~~ case upon ~~such~~ terms and
20 conditions ~~as~~ the fiduciary approves from time to time;

21 (4) To determine whether the liabilities incurred in the
22 conduct of the business are to be chargeable solely to the part of

1 the estate or trust set aside for use in the business or to the
2 estate or trust as a whole; and

3 (5) In all cases in which the fiduciary is required to file
4 accounts in any court or in any other public office, it is not
5 necessary to itemize receipts and disbursements and distributions
6 of property but it is sufficient for the fiduciary to show in the
7 account a single figure or consolidation of figures, and the
8 fiduciary is permitted to account for money and property received
9 from the business and any payments made to the business in lump sum
10 without itemization.

11 (f) *Form corporation or other entity.* -- To form a corporation
12 or other entity and to transfer, assign, and convey to ~~such~~ the
13 corporation or entity all or any part of the estate or of any trust
14 property in exchange for the stock, securities or obligations of
15 ~~any such~~ the corporation or entity, and to continue to hold ~~such~~
16 the stock and securities and obligations.

17 (g) *Operate farm.* -- To continue any farming operation
18 received by the fiduciary pursuant to the will or other instrument
19 and to do any and all things considered advisable by the fiduciary
20 in the management and maintenance of ~~such~~ the farm and the
21 production and marketing of crops and dairy, poultry, livestock,
22 orchard and forest products including, but not limited to, the

1 following powers:

2 (1) To operate the farm with hired labor, tenants or
3 sharecroppers;

4 (2) To lease or rent the farm for cash or for a share of the
5 crops;

6 (3) To purchase or otherwise acquire farm machinery and
7 equipment and livestock;

8 (4) To construct, repair and improve farm buildings of all
9 kinds needed in the fiduciary's judgment, for the operation of the
10 farm;

11 (5) To make or obtain loans or advances at the prevailing rate
12 or rates of interest for farm purposes such as for production,
13 harvesting or marketing, or for the construction, repair or
14 improvement of farm buildings or for the purchase of farm machinery
15 or equipment or livestock;

16 (6) To employ approved soil conservation practices in order to
17 conserve, improve and maintain the fertility and productivity of
18 the soil;

19 (7) To protect, manage and improve the timber and forest on
20 the farm and sell the timber and forest products when it is to the
21 best interest of the estate;

22 (8) To ditch, dam and drain damp or wet fields and areas of

1 the farm when and where needed;

2 (9) To engage in the production of livestock, poultry or dairy
3 products, and to construct such fences and buildings and plant ~~such~~
4 pastures and crops ~~as may be~~ necessary to carry on ~~such~~ the
5 operations;

6 (10) To market the products of the farm; and

7 (11) In general, to employ good husbandry in the farming
8 operation.

9 (h) *Manage real property.* -- (1) To improve, manage, protect
10 and subdivide any real property;

11 (2) To dedicate or withdraw from dedication parks, streets,
12 highways or alleys;

13 (3) To terminate any subdivision or part thereof;

14 (4) To borrow money for the purposes authorized by this
15 subdivision for ~~such~~ periods ~~of time~~ and upon ~~such~~ terms and
16 conditions as to rates, maturities and renewals ~~as~~ the fiduciary
17 considers advisable and to mortgage or otherwise encumber any ~~such~~
18 property or part thereof, whether in possession or reversion;

19 (5) To lease any ~~such~~ property or part thereof to commence at
20 the present or in the future, upon ~~such~~ terms and conditions,
21 including options to renew or purchase, and for such period or
22 periods ~~of time as~~ the fiduciary considers advisable although ~~such~~

1 the period or periods may extend beyond the duration of the trust
2 or the administration of the estate involved;

3 (6) To make coal, gravel, sand, oil, gas and other mineral
4 leases, contracts, licenses, conveyances or grants of every nature
5 and kind which are lawful in the jurisdiction in which ~~such~~ the
6 property lies;

7 (7) To manage and improve timber and forests on ~~such~~ the
8 property, to sell the timber and forest products, and to make
9 grants, leases, and contracts with respect thereto;

10 (8) To modify, renew or extend leases;

11 (9) To employ agents to rent and collect rents;

12 (10) To create easements and release, convey or assign any
13 right, title or interest with respect to any easement on ~~such~~ the
14 property or part ~~thereof~~ of the property;

15 (11) To erect, repair or renovate any building or other
16 improvement on ~~such~~ the property, and to remove or demolish any
17 building or other improvement, in whole or in part; and

18 (12) To deal with ~~any such~~ the property and every part ~~thereof~~
19 of the property in all other ways and for ~~such~~ other purposes or
20 considerations as it would be lawful for any person owning the same
21 to deal with ~~such~~ the property either in the same or in different
22 ways from those specified elsewhere in this subdivision. ~~(h)~~

1 (i) *Pay taxes and expenses.* -- To pay taxes, assessments,
2 compensation of the fiduciary, and other expenses incurred in the
3 collection, care, administration, and protection of the trust or
4 estate.

5 (j) *Receive additional property.* -- To receive additional
6 property from any source and administer ~~such~~ the additional
7 property as a portion of the appropriate trust or estate under the
8 management of the fiduciary but the fiduciary is not required to
9 receive ~~such~~ the property without his or her consent.

10 (k) *Deal with other trusts.* -- In dealing with one or more
11 fiduciaries:

12 (1) To sell property, real or personal, to, or to exchange
13 property with, the trustee of any trust which the decedent or the
14 settlor or his or her spouse or any child of his ~~shall have~~ or her
15 has created, for ~~such~~ estates and upon ~~such~~ terms and conditions as
16 to sale price, terms of payment, and security as the fiduciary
17 considers advisable; and the fiduciary is under no duty to follow
18 the proceeds of any such sale; and

19 (2) To borrow money for ~~such~~ periods ~~of time~~ and upon ~~such~~
20 terms and conditions as to rates, maturities, renewals and
21 securities ~~as~~ the fiduciary considers advisable from any trust
22 created by the decedent, his or her spouse, or any child of his or

1 her, for the purpose of paying debts of the decedent, taxes, the
2 costs of the administration of the estate, and like charges against
3 the estate, or any part thereof, or discharging the liability of
4 any fiduciary thereof and to mortgage, pledge or otherwise encumber
5 ~~such~~ a portion of the estate or any trust as may be required to
6 secure ~~such~~ the loan or loans and to renew ~~such~~ the loans.

7 (l) *Borrow money.* -- To borrow money for ~~such~~ periods ~~of time~~
8 and upon ~~such~~ terms and conditions as to rates, maturities,
9 renewals, and security ~~as~~ the fiduciary considers advisable,
10 including the power of a corporate fiduciary to borrow from its own
11 banking department, for the purpose of paying debts, taxes or other
12 charges against the estate or any trust, or any part thereof, and
13 to mortgage, pledge or otherwise encumber ~~such~~ a portion of the
14 estate or any trust as may be required to secure ~~such~~ the loan or
15 loans; and to renew existing loans either as maker or endorser.

16 (m) *Make advances.* -- To advance money for the protection of
17 the trust or estate, and for all expenses, losses and liabilities
18 sustained in the administration of the trust or estate or because
19 of the holding or ownership of any trust or estate assets, for
20 which advances with any interest the fiduciary ~~shall have~~ has a
21 lien on the assets of the trust or estate as against a beneficiary.

22 (n) *Vote shares.* -- To vote shares of stock owned by the

1 estate or any trust at stockholders meetings in person or by
2 special, limited or general proxy, with or without power of
3 substitution.

4 (o) *Register in name of nominee.* -- To hold a security in the
5 name of a nominee or in other form without disclosure of the
6 fiduciary relationship so that title to the security may pass by
7 delivery, but the fiduciary is liable for any act of the nominee in
8 connection with the stock so held.

9 (p) *Exercise options, rights and privileges.* -- To exercise
10 all options, rights, and privileges to convert stocks, bonds,
11 debentures, notes, mortgages or other property into other stocks,
12 bonds, debentures, notes, mortgages or other property; to subscribe
13 for other or additional stocks, bonds, debentures, notes, mortgages
14 or other property; and to hold ~~such~~ the stocks, bonds, debentures,
15 notes, mortgages or other property so acquired as investments of
16 the estate or trust so long as the fiduciary considers advisable.

17 (q) *Participate in reorganizations.* -- To unite with other
18 owners of property similar to any which may be held at any time in
19 the decedent's estate or in any trusts in carrying out any plan for
20 the consolidation or merger, dissolution or liquidation,
21 foreclosure, lease or sale of the property, incorporation or
22 reincorporation, reorganization or readjustment of the capital or

1 financial structure of any corporation, company or association the
2 securities of which may form any portion of an estate or trust; to
3 become and serve as a member of a stockholders or bondholders
4 protective committee; to deposit securities in accordance with any
5 plan agreed upon; to pay any assessments, expenses or sums of money
6 that may be required for the protection or furtherance of the
7 interest of the distributees of an estate or beneficiaries of any
8 trust with reference to ~~any~~ such the plan; and to receive as
9 investments of an estate or any trust any securities issued as a
10 result of the execution of ~~such~~ the plan.

11 (r) *Reduce interest rates.* -- To reduce the interest rate from
12 time to time on any obligation, whether secured or unsecured,
13 constituting a part of an estate or trust.

14 (s) *Renew and extend obligations.* -- To continue any
15 obligation, whether secured or unsecured, upon and after maturity
16 with or without renewal or extension upon ~~such~~ terms ~~as~~ the
17 fiduciary considers advisable, without regard to the value of the
18 security, if any, at the time of ~~such~~ the continuance.

19 (t) *Foreclose and bid in.* -- To foreclose, as an incident to
20 the collection of any bond, note or other obligation, any mortgage,
21 deed of trust or other lien securing ~~such~~ the bond, note or other
22 obligation, and to bid in the property at ~~such~~ the foreclosure

1 sale, or to acquire the property by deed from the mortgagor or
2 obligor without foreclosure; and to retain the property so bid in
3 or taken over without foreclosure.

4 (u) *Insure.* -- To carry ~~such~~ insurance coverage, including
5 public liability, for ~~such~~ hazards and in ~~such~~ amounts, either in
6 stock companies or in mutual companies, as the fiduciary considers
7 advisable.

8 (v) *Collect.* -- To collect, receive and receipt for rents,
9 issues, profits, and income of an estate or trust.

10 (w) *Litigate, compromise or abandon.* -- To compromise, adjust,
11 arbitrate, sue on or defend, abandon or otherwise deal with and
12 settle claims in favor of or against the estate or trust as the
13 fiduciary considers advisable, and the fiduciary's decision is
14 conclusive between the fiduciary and the beneficiaries of the
15 estate or trust and the person against or for whom the claim is
16 asserted, in the absence of fraud by ~~such~~ those persons; and in the
17 absence of fraud, bad faith or gross negligence of the fiduciary,
18 is conclusive between the fiduciary and the beneficiaries of the
19 estate or trust.

20 (x) *Employ and compensate agents, etc.* -- To employ and
21 compensate, out of income or principal or both and in ~~such~~
22 proportion as the fiduciary considers advisable, persons considered

1 by the fiduciary needful to advise or assist in the proper
2 settlement of the estate or administration of any trust, including,
3 but not limited to, agents, accountants, brokers, attorneys-at-law,
4 attorneys-in-fact, investment brokers, rental agents, realtors,
5 appraisers, and tax specialists; and to do so without liability for
6 any neglect, omission, misconduct or default of ~~such~~ the agent or
7 representative ~~provided~~ as long as he or she was selected and
8 retained with due care on the part of the fiduciary.

9 (y) *Acquire and hold property of two or more trusts undivided.*

10 -- To acquire, receive, hold and retain the principal of several
11 trusts created by a single instrument undivided until division
12 becomes necessary in order to make distributions; to hold, manage,
13 invest, reinvest, and account for the several shares or parts of
14 shares by appropriate entries in the fiduciary's books of account,
15 and to allocate to each share or part of share its proportionate
16 part of all receipts and expenses: *Provided*, That the provisions
17 of this subdivision do not defer the vesting in possession of any
18 share or part of share of the estate or trust.

19 (z) *Establish and maintain reserves.* -- To set up proper and
20 reasonable reserves for taxes, assessments, insurance premiums,
21 depreciation, obsolescence, amortization, depletion of mineral or
22 timber properties, repairs, improvements and general maintenance of

1 buildings or other property out of rents, profits or other income
2 received; and to set up reserves also for the equalization of
3 payments to or for beneficiaries: *Provided*, That the provisions of
4 this subdivision do not affect the ultimate interests of
5 beneficiaries in ~~such~~ the reserves.

6 (aa) *Distribute in cash or kind.* -- To make distribution of
7 capital assets of the estate or trust in kind or in cash, or
8 partially in kind and partially in cash, in divided or undivided
9 interests, as the fiduciary finds to be most practicable and for
10 the best interests of the distributees; and to determine the value
11 of capital assets for the purpose of making distribution thereof if
12 and when there ~~be~~ is more than one distributee thereof, which
13 determination ~~shall be~~ is binding upon the distributees unless
14 clearly capricious, erroneous and inequitable: *Provided*, That the
15 fiduciary may not exercise any power under this subdivision unless
16 the fiduciary holds title to or an interest in the property to be
17 distributed and is required or authorized to make distribution
18 thereof.

19 (bb) *Pay to or for minors or incompetents.* -- To make payments
20 in money, or in property in lieu of money, to or for a minor or
21 incompetent in any one or more of the following ways:

22 (1) Directly to ~~such~~ the minor or incompetent;

1 (2) To apply directly in payment for the support, maintenance,
2 education, and medical, surgical, hospital or other institutional
3 care of ~~such~~ the minor or incompetent;

4 (3) To the legal or natural guardian of ~~such~~ the minor or
5 incompetent;

6 (4) To any other person, whether or not appointed guardian of
7 the person by any court, who does, in fact, have the care and
8 custody of the person of ~~such~~ the minor or incompetent.

9 The fiduciary is not under any duty to see to the application
10 of the payments so made, if the fiduciary exercised due care in the
11 selection of the person, including the minor or incompetent, to
12 whom ~~such~~ the payments were made; and the receipt of ~~such~~ the
13 person is full acquittance to the fiduciary.

14 (cc) *Apportion and allocate receipts and expenses.* -- Where
15 not otherwise provided by statute to determine:

16 (1) What is principal and what is income of any estate or
17 trust and to allocate or apportion receipts and expenses as between
18 principal and income in the exercise of the fiduciary's discretion,
19 and, by way of illustration and not limitation of the fiduciary's
20 discretion, to charge premiums on securities purchased at a premium
21 against principal or income or partly against each;

22 (2) Whether to apply stock dividends and other noncash

1 dividends to income or principal or apportion them as the fiduciary
2 considers advisable; and

3 (3) What expenses, costs, taxes (other than estate,
4 inheritance, and succession taxes and other governmental charges)
5 shall be charged against principal or income or apportioned between
6 principal and income and in what proportions.

7 (dd) *Make contracts and execute instruments.* -- To make
8 contracts and to execute instruments, under seal or otherwise, as
9 may be necessary in the exercise of the powers ~~herein~~ granted in
10 this section.

11 (ee) The foregoing powers are limited as follows for any trust
12 which ~~shall be~~ is classified as a "private foundation" as that term
13 is defined by section 509 of the Internal Revenue Code of 1954 or
14 corresponding provisions of any subsequent federal tax laws
15 (including each nonexempt charitable trust described in section
16 4947(a)(1) of the code which is treated as a private foundation) or
17 nonexempt split-interest trust described in section 4947(a)(2) of
18 the Internal Revenue Code of 1954 or corresponding provisions of
19 any subsequent federal tax laws (but only to the extent that
20 section 508(e) of the code is applicable to ~~such~~ the nonexempt
21 split-interest trust under section 4947(a)(2)):

22 (1) The fiduciary shall make distributions of ~~such~~ amounts,

1 for each taxable year, at ~~such time~~ times and in ~~such a~~ a manner as
 2 not to become subject to the tax imposed by section 4942 of the
 3 Internal Revenue Code of 1954, or corresponding provisions of any
 4 subsequent federal tax laws;

5 (2) No fiduciary may engage in any act of self-dealing as
 6 defined in section 4941(d) of the Internal Revenue Code of 1954, or
 7 corresponding provisions of any subsequent federal tax laws;

8 (3) No fiduciary may retain any excess business holdings as
 9 defined in section 4943(c) of the Internal Revenue Code of 1954, or
 10 corresponding provisions of any subsequent federal tax laws;

11 (4) No fiduciary may make any investments in ~~such a~~ a manner as
 12 to subject the trust to tax under section 4944 of the Internal
 13 Revenue Code of 1954, or corresponding provisions of any subsequent
 14 federal tax laws;

15 (5) No fiduciary may make any taxable expenditures as defined
 16 in section 4945(e) of the Internal Revenue Code of 1954, or
 17 corresponding provisions of any subsequent federal tax laws.

18 ~~§44-5A-4. Termination of trusts valued at less than \$100,000;~~
 19 ~~spendthrift and other protective trusts for~~
 20 ~~incompetents and children~~ Designation of
 21 testamentary trustee as beneficiary of insurance.

22 ~~(a) Upon application of a trustee of a trust with assets~~

1 ~~valued at less than fifty thousand dollars the principal of which~~
2 ~~is not distributable until some future time, a circuit court having~~
3 ~~in rem jurisdiction over the corpus of the trust may order that the~~
4 ~~trust be terminated upon a finding that the continued existence of~~
5 ~~the trust is no longer economically beneficial or practical~~
6 ~~because, relative to the costs of administering the trust or~~
7 ~~because of an existing economic circumstance that directly~~
8 ~~threatens the solvency, financial integrity or monetary value of~~
9 ~~such trust, continuance of the trust pursuant to its existing terms~~
10 ~~will defeat or substantially impair the accomplishment of its~~
11 ~~purposes.~~

12 ~~(b) Notwithstanding the provisions of subsection (a) of this~~
13 ~~section to the contrary, the court may not, pursuant to said~~
14 ~~subsection, order the termination of a spendthrift or other~~
15 ~~protective trust which exists for the benefit of one or more~~
16 ~~incompetents or minors in the absence of the court's further~~
17 ~~finding that there exists or will exist upon the termination of~~
18 ~~such trust an adequate alternative protective device or provision~~
19 ~~for the management of the trust assets and protection of the~~
20 ~~primary beneficiary or beneficiaries for whom the trust was~~
21 ~~created.~~

22 ~~(c) Upon the entry of an order that the trust be terminated~~

1 ~~pursuant to the provisions of this section, the trustee shall, at~~
2 ~~least fourteen days prior to the date upon which the trustee~~
3 ~~proposes to terminate the trust, file with the court such an~~
4 ~~accounting of the activities and assets of the trust as may be~~
5 ~~directed by the court and serve a copy thereof upon the parties to~~
6 ~~the action and such other persons that may be affected by the~~
7 ~~termination of the trust. Upon the court's review of the~~
8 ~~accounting, the court may enter an order approving the accounting~~
9 ~~and the terms of the termination of the trust proposed by the~~
10 ~~trustee or may enter such other order as the court may deem~~
11 ~~appropriate in the action. A policy of life insurance may contain~~
12 ~~a designation of a beneficiary, a trustee or trustees named or to~~
13 ~~be named by will, if the designation is made in accordance with the~~
14 ~~provisions of the policy and the requirements of the insurer. The~~
15 ~~proceeds of the insurance shall be paid to the trustee or trustees~~
16 ~~to be held and disposed of under the terms of the will as they~~
17 ~~exist at the death of the testator; but if no trustee or trustees~~
18 ~~makes claim to the proceeds from the insurance company within one~~
19 ~~year after the death of the insured, or if satisfactory evidence is~~
20 ~~furnished the insurance company within the one-year period showing~~
21 ~~that no trustee can qualify to receive the proceeds, payment shall~~
22 ~~be made by the insurance company to the executors, administrators~~

1 or assigns of the insured, unless otherwise provided by agreement
2 with the insurance company during the lifetime of the insured. The
3 proceeds of the insurance as collected by the trustee or trustees
4 are not subject to debts of the insured or to inheritance tax to
5 any greater extent than if the proceeds were payable to any other
6 named beneficiary other than the estate of the insured, and are not
7 considered as payable to the estate of the insured for any purpose.
8 The insurance proceeds so held in trust may be commingled with any
9 other assets which may properly come into the trust as provided in
10 the will. Enactment of this section does not invalidate previous
11 life insurance policy designations naming trustees of trusts
12 established by will.

13 **§44-5A-5. Distribution of assets in satisfaction of pecuniary**
14 **bequests; authority of fiduciaries to enter into**
15 **certain agreements; validating certain agreements;**
16 **providing for discretionary division of trusts for**
17 **tax, administrative or other purposes.**

18 (a) Where a will, trust or other governing instrument
19 authorizes or directs the fiduciary to satisfy wholly or partly in
20 kind a pecuniary bequest or a separate trust to be funded by a
21 pecuniary amount or formula unless the will, trust or other
22 governing instrument expressly provides otherwise, the assets

1 selected by the fiduciary for that purpose shall be valued at their
2 respective values on the date or dates of their distribution, and
3 if any pecuniary bequests or separate trusts established under the
4 will or trust by a pecuniary amount or formula is not entirely
5 funded or an amount necessary to fund the bequest or trust
6 completely is not irrevocably set aside within fifteen months after
7 the date of the testator's or grantor's death, the fiduciary shall
8 allocate to the bequest or trust a prorata share of the income
9 earned by the estate of the testator or grantor or other fund from
10 which the bequest or trust is to be funded between the date of
11 death of the testator or grantor and the date or dates of the
12 funding.

13 (b) Whenever a fiduciary under the provisions of a will, trust
14 or other governing instrument is required to satisfy a pecuniary
15 bequest or transfer in trust and is authorized to satisfy the
16 bequest or transfer by selection and distribution of assets in
17 kind, and the will, trust or other governing instrument further
18 provides that the assets to be so distributed shall or may be
19 valued by some standard other than their fair market value on the
20 date of distribution, the fiduciary, unless the will, trust or
21 other governing instrument otherwise specifically directs, shall
22 distribute assets, including cash, fairly representative of

1 appreciation or depreciation in the value of all property available
2 for distribution in satisfaction of the pecuniary bequest or
3 transfer. This section does not apply to prevent a fiduciary from
4 carrying into effect the provisions of the will, trust or other
5 governing instrument that the fiduciary, in order to implement the
6 bequest or transfer, must distribute assets, including cash, having
7 an aggregate fair market value at the date or dates of distribution
8 amounting to no less than the amount of the pecuniary bequest or
9 transfer as finally determined for federal estate tax purposes.

10 (c) (1) Any fiduciary having discretionary powers under a will
11 or other governing instrument with respect to the selection of
12 assets to be distributed in satisfaction of a pecuniary bequest or
13 transfer in trust is authorized to enter into agreements with the
14 Commissioner of Internal Revenue of the United States of America
15 and other taxing authorities requiring the fiduciary to exercise
16 the fiduciary's discretion so that cash and other properties
17 distributed in satisfaction of the bequest or transfer in trust
18 will be fairly representative of the appreciation or depreciation
19 in value of all property then available for distribution in
20 satisfaction of the bequest or transfer in trust and any such
21 agreement heretofore entered into after April 1, 1964, is hereby
22 validated. The fiduciary is authorized to enter into any other

1 agreement not in conflict with the express terms of the will, trust
2 or other governing instrument that may be necessary or advisable in
3 order to secure for federal estate tax purposes the appropriate
4 marital deduction or other deduction or exemption available under
5 the Internal Revenue laws of the United States of America, and to
6 do and perform all acts incident to that purpose.

7 (2) Unless ordered by a court of competent jurisdiction, the
8 bank or trust company operating a common trust fund, as provided in
9 section six of this article, is not required to render an
10 accounting with regard to the fund, before any fiduciary
11 commissioner but it may, by application to the circuit court of the
12 county in which is located the principal place of business of the
13 bank or trust company, secure the approval of an accounting in the
14 condition the court may fix: *Provided*, That nothing in this
15 section relieves a fiduciary acquiring, holding or disposing of an
16 interest in any common trust fund from making an accounting as
17 required by law with respect of the interest.

18 (d) The fiduciary of any trust created by will, trust or other
19 governing instrument may from time to time without need of court
20 approval to divide the trust or trusts for purposes of the
21 generation skipping transfer tax ("GST") of section 2601 of the
22 Internal Revenue Code of 1986, as in effect on January 1, 2010, or

1 any similar or successor law of like import, or for any other tax,
2 administrative or other purposes. In exercising this authority for
3 inclusion ratio, marital deduction election, reverse qualified
4 terminal interest property election or other GST or other tax
5 purposes, the power shall be exercised in a manner that complies
6 with applicable Internal Revenue Code Treasury Regulations or other
7 requirements for accomplishing the intended purposes. If that
8 division is made for purposes of separating assets with respect to
9 which the federal estate tax marital deduction election is to be
10 made from those as to which the election is not to be made, the
11 division shall be done on a fractional or percentage basis and the
12 assets of the trust or other fund to be divided shall be valued for
13 purposes of the division on the date or dates of division.

14 **§44-5A-6. Restrictions on exercise of power for fiduciary's**
15 **benefit.**

16 (a) A power conferred upon a person in his or her capacity as
17 fiduciary to make discretionary distributions of principal or
18 income to himself or herself or to make discretionary allocations
19 in his or her favor of receipts or expenses between income and
20 principal cannot be exercised by him or her. If the power is
21 conferred on two or more fiduciaries, it may be exercised by the
22 fiduciaries who are not so disqualified. If there is no fiduciary

1 qualified to exercise the power, it may be exercised by a special
2 fiduciary appointed by the court authorized under article fourteen
3 of this chapter, and in accordance with the procedure described
4 therein, to appoint a successor or substitute trustee. Except as
5 provided in subsection (c) of this section this section applies to
6 all trusts now in existence and to all trusts which are created
7 later.

8 (b) Unless either: (1) Mandatory; (2) limited by an
9 ascertainable standard relating to the health, education, support
10 or maintenance of the fiduciary; or (3) exercisable by the
11 fiduciary only in conjunction with another person having a
12 substantial interest in the trust which is adverse to the interest
13 of the fiduciary, a power to make distributions of principal or
14 income is a discretionary power for purposes of this section.

15 (c) This section does not apply to trusts that come into
16 existence or are amended after the effective date of this section
17 which show a clear intent that this section does not apply.

18 **§44-5A-7. Powers of fiduciaries regarding environmental laws.**

19 (a) For purposes of this section:

20 (1) "Environmental law" means any federal, state or local law,
21 rule, regulation or ordinance relating to the regulation of

1 hazardous substances or hazardous wastes, air pollution, water
2 pollution and underground storage tanks;

3 (2) "Hazardous substance" means any substance defined as
4 hazardous in the Comprehensive Environmental Response, Compensation
5 and Liability Act ("CERCLA") [42 U.S.C. 9601, et seq. (1980)] as
6 amended and in effect on January 1, 2010, and regulations
7 promulgated thereunder;

8 (3) "Hazardous waste" means a waste characterized or listed as
9 hazardous in the Resource, Conservation and Recovery Act ("RCRA")
10 [42 U.S.C. 6901, et seq. as amended] as in effect on January 1,
11 2010, and regulations promulgated thereunder;

12 (4) "Fiduciary" means a fiduciary as defined by section one-d,
13 article four-d, chapter thirty-one of this code.

14 (b) In addition to powers, remedies and rights which may be
15 set forth in any will, trust agreement or other document which is
16 the source of authority, a trustee, executor, administrator,
17 guardian or one acting in any other fiduciary capacity, whether an
18 individual, corporation or other entity ("fiduciary") has the
19 following powers, rights and remedies whether or not set forth in
20 the will, trust agreement or other document which is the source of
21 authority:

1 (1) To inspect property held by the fiduciary including
2 interests in sole proprietorships, partnerships or corporations and
3 any assets owned by any such business enterprise, for the purpose
4 of determining compliance with any environmental law affecting the
5 property and to take necessary or reasonable action, including
6 reporting to the appropriate regulatory authority as may be
7 otherwise required by law, with respect to any actual or potential
8 violation of any environmental law affecting property held by the
9 fiduciary;

10 (2) To take, on behalf of the estate or trust, any action
11 necessary to prevent, abate or otherwise remedy any actual or
12 threatened violation of any environmental law affecting property
13 held by the fiduciary, either before or after the initiation of an
14 enforcement action by any governmental body;

15 (3) To refuse to accept property in trust or estate if the
16 fiduciary determines any property to be donated or conveyed to the
17 trust or estate is contaminated by any hazardous substance or
18 hazardous waste or is being used or has been used for any activity
19 directly or indirectly involving any violation of an environmental
20 law which is reasonably likely to result in liability to the
21 fiduciary: *Provided*, That the refusal does not limit the liability
22 of the trust or estate or its income or principal, for any

1 liability the trust or estate may otherwise have in connection with
2 any environmental law, but only to limit the liability of the
3 fiduciary. Property not accepted into a trust or estate by the
4 fiduciary may revert to the grantor or its successors or pass by
5 the laws of descent and distribution, as may otherwise be provided
6 by law;

7 (4) To settle or compromise at any time any and all claims
8 against the trust or estate which may be asserted by any
9 governmental body or private party involving the alleged violation
10 of any environmental law affecting property held in trust or in an
11 estate;

12 (5) To decline to serve as a fiduciary if the fiduciary
13 reasonably believes that there is or may be a conflict of interest
14 between it and its fiduciary capacity and in its individual
15 capacity because of potential claims or liabilities which may be
16 asserted against it on behalf of the trust or estate because of the
17 type or condition of assets held therein.

18 (c) The fiduciary is entitled to charge the cost of any
19 inspection, review, abatement, response, cleanup or remedial action
20 authorized herein against the income or principal of the trust or
21 estate.

1 (d) A fiduciary is not personally liable to any beneficiary or
2 other party for any decrease in value of assets in trust or in an
3 estate by reason of the fiduciary's compliance with any
4 environmental law, specifically including any reporting requirement
5 under the law.

6 (e) Neither the acceptance by the fiduciary of property nor
7 the failure by the fiduciary to inspect property creates any
8 inference as to whether or not there is or may be any liability
9 under any environmental law with respect to the property.

10 **ARTICLE 6. INVESTMENTS BY FIDUCIARIES.**

11 **§44-6-1. Fiduciaries to put money out at interest.**

12 (a) Executors, administrators, guardians, curators, committees
13 or trustees may, by direction of the circuit court of the county,
14 where they were appointed or qualified, put out at interest all
15 moneys in their hands which they are or may be lawfully required to
16 retain, whether ~~the same~~ it belongs to minors, legatees or other
17 person or persons, upon ~~such~~ security, and for ~~such~~ the length of
18 time, as ~~such~~ the court will allow, and if the security so taken,
19 bona fide and without fraud, ~~shall prove~~ proves insufficient, it
20 ~~shall be~~ is the loss of the beneficiaries entitled thereto; and it
21 ~~shall be~~ is the duty of ~~such~~ the executors, administrators,
22 guardians, curators, committees or trustees, in cases where the

1 estates in their hands may be materially benefited thereby, to make
2 application to ~~such~~ the circuit court for ~~such~~ direction, and in
3 case they ~~shall~~ neglect so to do they ~~shall be~~ are accountable for
4 the interest that might have been made thereby; but if no person
5 who may be willing to take ~~such~~ the money at interest, giving ~~such~~
6 the security, can be found by ~~such~~ the executors, administrators,
7 guardians, curators, committees or trustees, then ~~such~~ the
8 executors, administrators, guardians, curators, committees or
9 trustees, ~~shall~~ in ~~such~~ those cases, ~~be~~ are accountable for the
10 principal money only, until it can be put out at interest as
11 aforesaid; but in any case where executors, administrators,
12 guardians, curators, committees or trustees use the money of the
13 estates which ~~shall~~ come to their hands, they ~~shall be~~ are
14 accountable not only for the principal, but also for the interest
15 thereon.

16 (b) This section does not apply to a trust or a trustee.

17 **§44-6-2. In what securities fiduciaries may invest trust funds.**

18 Any executor, administrator, guardian, curator, committee,
19 trustee or other fiduciary whose duty it may be to loan or invest
20 money entrusted to him or her as such, may, without any order of
21 any court, invest the same or any part thereof in any of the
22 following securities, and without liability for any loss resulting

1 from investments therein: *Provided*, That except as otherwise
2 provided in article six-c of this chapter, ~~such~~ the fiduciary shall
3 exercise the judgment and care under the circumstances then
4 prevailing which ~~men~~ persons of prudence, discretion and
5 intelligence exercise in the management of their own affairs, not
6 in regard to speculation, but in regard to the permanent
7 disposition of their funds, considering the probable income as well
8 as the probable safety of their capital:

9 (a) In bonds or interest-bearing notes or obligations of the
10 United States, or those for which the faith of the United States is
11 distinctly pledged to provide for the payment of the principal and
12 interest thereof, including, but not by way of limitation, bonds or
13 debentures issued under the "Farm Credit Act Amendments of 1986"
14 (12 U. S. C. §2001 et. seq.), as amended, debentures issued by the
15 Federal National Mortgage Association, securities issued by the
16 Federal Home Loan Bank System; and in bonds, interest-bearing notes
17 and obligations issued, guaranteed or assumed by the "International
18 Bank for Reconstruction and Development" or by the "Inter-American
19 Development Bank" or by the "Asian Development Bank" or by the
20 "African Development Bank";

21 (b) In bonds or interest-bearing notes or obligations of this
22 state;

1 (c) In bonds of any state of the United States which has not
2 within ten years previous to the making of ~~such~~ the investment
3 defaulted in the payment of any part of either principal or
4 interest on any of its bonds issued by authority of the Legislature
5 of ~~such~~ the state;

6 (d) In the bonds or interest-bearing notes or obligations of
7 any county, district, school district or independent school
8 district, municipality or any other political division of this
9 state that have been issued pursuant to the authority of any law of
10 this state, since May 9, 1917;

11 (e) In bonds and negotiable notes secured by first mortgage or
12 first trust deed upon improved real estate where the amount secured
13 by ~~such~~ the mortgage or trust deed ~~shall~~ does not at the time of
14 making the same exceed eighty percent of the assessed value, or
15 sixty-six and two-thirds percent of the appraised value as
16 determined by wholly disinterested and independent appraisers,
17 whichever value ~~shall be~~ is the higher, of the real estate covered
18 by ~~such~~ the mortgage or trust deed, and when ~~such~~ the mortgage or
19 trust deed is accompanied by a satisfactory abstract of title,
20 certificate of title or title insurance policy, showing good title
21 in the mortgagor when making ~~such~~ the mortgage or trust deed, and
22 by a fire insurance policy in an old line company with loss, if

1 any, payable to the mortgagee or trustee as his or her interest may
2 appear: *Provided*, That the rate of interest upon the above
3 enumerated securities in this subdivision, in which ~~such~~ the
4 investments may be made, ~~shall~~ may not be less than three and
5 one-half percent per annum nor greater than the maximum rate of
6 interest which ~~such~~ the bonds or negotiable notes may bear under
7 applicable law: *Provided, however*, That the provisions herein
8 establishing a minimum rate of interest ~~shall~~ do not apply to
9 investments in force as of the effective date of this section;

10 (f) In savings accounts and time deposits of bank or trust
11 companies to the extent that ~~such~~ the deposits are insured by the
12 Federal Deposit Insurance Corporation, or by any other similar
13 federal instrumentality that may be hereafter created, ~~provided~~
14 ~~there shall be such~~ if there is an instrumentality in existence and
15 available for the purpose, or by bonds of solvent surety companies:
16 *Provided*, That the rate of interest upon ~~such~~ the savings accounts
17 or time deposits ~~shall~~ may not be less than the rate paid other
18 depositors in ~~such~~ the bank or trust company;

19 (g) In shares of state building and loan associations, or
20 federal savings and loan associations, to the extent that ~~such~~ the
21 shares are insured by the Federal Savings and Loan Insurance
22 Corporation, or by any other similar federal instrumentality that

1 may be hereafter created: *Provided*, That there ~~shall be such~~ is an
2 instrumentality in existence and available for the purpose, or by
3 bonds of solvent surety companies: *Provided, however*, That the
4 dividend rate upon ~~such the~~ shares ~~shall~~ may not be less than the
5 rate paid to other shareholders in ~~such the~~ associations; and

6 (h) In other securities of corporations organized and existing
7 under the laws of the United States, or of the District of Columbia
8 or any state of the United States, including, but not by way of
9 limitation, bonds, debentures, notes, equipment trust obligations
10 or other evidences of indebtedness and shares of common and
11 preferred stocks of ~~such the~~ corporations and securities of any
12 open end or closed end management type investment company or
13 investment trust registered under the "Federal Investment Company
14 Act" of 1940, as from time to time amended, which ~~men~~ persons of
15 prudence, discretion and intelligence acquire or retain for their
16 own account, ~~provided, and upon conditions, however, that~~ as long
17 as:

18 (1) ~~No~~ An investment ~~shall~~ may not be made pursuant to the
19 provisions of this subdivision which, at the time ~~such the~~
20 investment ~~shall be~~ is made, will cause the aggregate market value
21 thereof to exceed fifty percent of the aggregate market value at
22 that time of all of the property of the fund held by ~~such the~~

1 fiduciary. Notwithstanding the aforesaid percentage limitation the
2 cash proceeds of the sale of securities received or purchased by a
3 fiduciary and made eligible by this subdivision may be reinvested
4 in any securities of the type described in this subdivision;

5 (2) ~~No bonds~~ Bonds, debentures, notes, equipment trust
6 obligations or other evidence of indebtedness of ~~such~~ the
7 corporations ~~shall~~ may not be purchased under authority of this
8 subdivision unless ~~such~~ the obligations, if other than issues of a
9 common carrier subject to the provisions of section twenty-a of the
10 "Interstate Commerce Act", as amended, ~~shall be~~ are obligations
11 issued, guaranteed or assumed by corporations which have any
12 securities currently registered with the Securities and Exchange
13 Commission; and

14 (3) ~~No common~~ Common or preferred stocks, other than bank and
15 insurance company stocks, ~~shall~~ may not be purchased under
16 authority of this subdivision unless currently fully listed and
17 registered upon an exchange registered with the Securities and
18 Exchange Commission as a national securities exchange. ~~No~~ A sale
19 or other liquidation of any investment ~~shall~~ may not be required
20 solely because of any change in the relative market value of those
21 investments made eligible by this subdivision and those made
22 eligible by the preceding subdivisions of this section. In

1 determining the aggregate market value of the property of a fund
2 and the percentage of a fund to be invested under the provisions of
3 this subdivision, a fiduciary may rely upon published market
4 quotations as to those investments for which ~~such~~ the quotations
5 are available, and upon such valuations of other investments as in
6 the fiduciary's best judgment seem fair and reasonable according to
7 available information.

8 Trust funds received by executors, administrators, guardians,
9 curators, committees, trustees and other fiduciaries may be kept
10 invested in the securities originally received by them, or if the
11 trust funds originally received were stock or securities of a bank,
12 in shares of stock or other securities (and securities received as
13 distributions in respect thereof) of a holding company subject to
14 the federal Bank Holding Company Act of 1956, as amended, received
15 upon conversion of, or in exchange for, shares of stock or other
16 securities of ~~such~~ the bank; unless otherwise ordered by a court
17 having jurisdiction of the matter, as hereinafter provided, or
18 unless the instrument under which the trust was created ~~shall~~
19 ~~direct~~ directs that a change of investment be made, and any such
20 fiduciary ~~shall not be~~ is not liable for any loss that may occur by
21 depreciation of ~~such~~ the securities.

1 This section ~~shall~~ does not apply where the instrument
2 creating the trust, or the last will and testament of any testator
3 or any court having jurisdiction of the matter, specially directs
4 in what securities the trust funds shall be invested, and every
5 ~~such~~ the court ~~is hereby given~~ has power specially to direct by
6 order or orders, from time to time, additional securities in which
7 trust funds may be invested, and any investment thereof made in
8 accordance with ~~any such~~ the special direction ~~shall be~~ is legal,
9 and no executor, administrator, guardian, curator, committee,
10 trustee or other fiduciary ~~shall~~ may be held for any loss resulting
11 in any such case.

12 This section does not apply to trusts or trustees.

13 **§44-6-11. Application only to executors, administrators,**
14 **guardians, curators or committees.**

15 The provisions of this article apply only to executors,
16 administrators, guardians, curators or committees, as the case may
17 be, and do not apply to or affect trustees who are governed by the
18 provisions of the West Virginia Uniform Prudent Investor Act in
19 article six-c of this chapter and the West Virginia Uniform Trust
20 Code in chapter forty-four-d of this code.

21 **ARTICLE 6C. UNIFORM PRUDENT INVESTOR ACT.**

22 **§44-6C-1. Prudent investor rule.**

1 (a) ~~Notwithstanding the provisions of section two, article six~~
2 ~~of this chapter, and~~ Except as otherwise provided in subsection (b)
3 of this section, a trustee who invests and manages trust assets
4 owes a duty to the beneficiaries of the trust to comply with the
5 prudent investor rule set forth in this article.

6 (b) The prudent investor rule, a default rule, may be
7 expanded, restricted, eliminated or otherwise altered by the
8 provisions of a trust instrument. A trustee is not liable to a
9 beneficiary to the extent that the trustee acted in reasonable
10 reliance on the provisions of the trust instrument.

11 **§44-6C-2. Standard of care; portfolio strategy; risk and return**
12 **objectives.**

13 (a) A trustee shall invest and manage trust assets as a
14 prudent investor would, by considering the purposes, terms,
15 distribution requirements and other circumstances of the trust. In
16 satisfying this standard, the trustee shall exercise reasonable
17 care, skill and caution.

18 (b) A trustee's investment and management decisions respecting
19 individual assets must be evaluated not in isolation but in the
20 context of the trust portfolio as a whole and as a part of an
21 overall investment strategy having risk and return objectives
22 reasonably suited to the trust.

1 (c) Among circumstances that a trustee shall consider in
2 investing and managing trust assets are such of the following as
3 are relevant to the trust or its beneficiaries:

4 (1) General economic conditions;

5 (2) The possible effect of inflation or deflation;

6 (3) The expected tax consequences of investment decisions or
7 strategies;

8 (4) The role that each investment or course of action plays
9 within the overall trust portfolio, which may include financial
10 assets, interests in closely held enterprises, tangible and
11 intangible personal property and real property;

12 (5) The expected total return from income and the appreciation
13 of capital;

14 (6) Other resources of the beneficiaries;

15 (7) Needs for liquidity, regularity of income and preservation
16 or appreciation of capital; and

17 (8) An asset's special relationship or special value, if any,
18 to the purposes of the trust or to one or more of the
19 beneficiaries.

20 (d) A trustee shall make a reasonable effort to verify facts
21 relevant to the investment and management of trust assets.

1 (e) A trustee may invest in any kind of property or type of
2 investment consistent with the standards of this article.

3 (f) A trustee who has special skills or expertise, or is named
4 trustee in reliance upon the trustee's representation that the
5 trustee has special skills or expertise, has a duty to use those
6 special skills or expertise.

7 (g) (1) Unless otherwise directed by the terms of the trust
8 instrument, the duties of a trustee of an irrevocable life
9 insurance trust with respect to acquiring or retaining a contract
10 of insurance upon the life of the grantor, or the lives of the
11 grantor and the grantor's spouse, do not include a duty:

12 (A) To determine whether the contract is or remains a proper
13 investment;

14 (B) To exercise policy options available under the contract in
15 the event the policy lapses or is terminated due to failure to pay
16 premiums; or

17 (C) To diversify the contract.

18 (2) A trustee is not liable to the beneficiaries of the trust
19 or to any other party for any loss arising from the absence of
20 those duties upon the trustee.

21 **§44-6C-9. Delegation of investment and management functions.**

1 (a) A trustee may delegate investment and management functions
2 that a prudent trustee of comparable skills could properly delegate
3 under the circumstances. The trustee shall exercise reasonable
4 care, skill and caution in:

5 (1) Selecting an agent;

6 (2) Establishing the scope and terms of the delegation,
7 consistent with the purposes and terms of the trust; and

8 (3) Periodically reviewing the agent's actions in order to
9 monitor the agent's performance and compliance with the terms of
10 the delegation.

11 (b) In performing a delegated function, an agent owes a duty
12 to the trust to exercise reasonable care to comply with the terms
13 of the delegation.

14 (c) A trustee who complies with the requirements of subsection
15 (a) of this section is not liable to the beneficiaries or to the
16 trust for the decisions or actions of the agent to whom the
17 function was delegated.

18 (d) By accepting the delegation of a trust function from the
19 trustee of a trust that is subject to the law of this state, an
20 agent submits to the jurisdiction of the courts of this state

21 (e) The delegating trustee is not responsible for the
22 decisions, actions or inactions of the trustee to whom those duties

1 and powers have been delegated if the delegating trustee has
 2 exercised reasonable care, skill and caution in establishing the
 3 scope and specific terms of the delegation and in reviewing
 4 periodically the performance of the trustee to whom the duties and
 5 powers have been delegated and the trustee's compliance with the
 6 scope and specific terms of the delegation.

7 **ARTICLE 7. RESIGNATION OF PERSONAL REPRESENTATIVES AND PROCEDURE**
 8 **UPON RESIGNATION.**

9 **§44-7-1. Fiduciary desiring to resign to file petition; summons**
 10 **thereon.**

11 ~~Any executor, administrator, guardian~~ A personal
 12 representative or curator or committee, desiring to resign his or
 13 her trust, may file his or her petition for that purpose in the
 14 county ~~court~~ commission of the county in which he or she was
 15 appointed, ~~as such,~~ stating the names of all persons, so far as
 16 known by him or her, interested in the estate in his or her hands
 17 or under his or her control, and to which his or her duties as ~~such~~
 18 fiduciary relate, and if any of them ~~be~~ are under disability, or
 19 nonresidents of the state; or if there ~~be~~ are persons interested in
 20 ~~such~~ the estate whose names are unknown, all of ~~such~~ these facts,
 21 and the names of the guardians and committees of ~~such~~ the persons
 22 under disability, if there ~~be~~ are ~~such~~ guardians or committees,

1 shall be stated in the petition. Upon the filing of ~~such~~ the
2 petition the clerk of the court shall issue a summons against all
3 the persons so named and the guardians and the committees of ~~such~~
4 ~~as are~~ those under disability, if they have any, and against "the
5 unknown parties in interest," if any there ~~be~~ are, mentioned in
6 ~~such~~ the petition, to appear before the court on a day to be named
7 in the summons, which day ~~shall~~ may be not less than thirty days
8 from the filing of ~~such~~ the petition, and answer the ~~same~~ petition,
9 and state to the court the reasons, if any they have, why ~~such~~ the
10 petition should not be granted. If any of the persons ~~so~~
11 interested reside in another county in this state, the summons as
12 to them shall be directed and sent by mail by the clerk to the
13 sheriff of that county to be served and returned by him or her; and
14 as to the persons named in ~~such~~ the petition who reside out of this
15 state, or who cannot by the use of due diligence be found, and as
16 to ~~such~~ the unknown parties, an order of publication shall be
17 awarded against them, which shall be published or posted and
18 published, as in cases of appointment and qualification of personal
19 representatives.

20 **§44-7-4. Application only to personal representatives, curators or**
21 **minor guardians.**

1 The provisions of this article apply only to personal
2 representatives, curators and minor guardians, as the case may be,
3 and do not apply to or affect guardians and conservators of an
4 adult protected person who are governed by the provisions of the
5 Guardian and Conservatorship Act in chapter forty-four-a of this
6 code or trustees who are governed by the provisions of the West
7 Virginia Uniform Trust Code in chapter forty-four-d of this code.

8 **CHAPTER 44D. UNIFORM TRUST CODE.**

9 **ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.**

10 **§44D-1-101. Short title.**

11 This chapter may be cited as the "West Virginia Uniform Trust
12 Code."

13 **§44D-1-102. Scope.**

14 This chapter applies to express trusts, charitable or
15 noncharitable, and trusts created pursuant to a statute, judgment,
16 or decree that requires the trust to be administered in the manner
17 of an express trust.

18 **§44D-1-103. Definitions.**

19 In this chapter:

20 (a) "Action," with respect to an act of a trustee, includes a
21 failure to act.

1 (b) "Ascertainable standard" means a standard relating to an
2 individual's health, education, support or maintenance within the
3 meaning of Section 2041(b)(1)(A) or 2514(c)(1) of the Internal
4 Revenue Code.

5 (c) "Beneficiary" means a person that:

6 (1) Has a present or future beneficial interest in a trust,
7 vested or contingent;

8 (2) In a capacity other than that of trustee, holds a power of
9 appointment over trust property; or

10 (3) A charitable organization that is expressly designated in
11 the terms of the trust instrument to receive distributions.

12 (d) "Charitable trust" means a trust, or portion of a trust,
13 created for a charitable purpose described in subsection (a),
14 section four hundred five, article four of this chapter.

15 (e) "Conservator" means a person appointed by the court to
16 administer the estate and financial affairs of a protected person.

17 (f) "Court" means a court of this state having proper
18 jurisdiction under section two hundred three, article two of this
19 chapter, and venue under section two hundred four of that article.

20 (g) "Current beneficiary" means a beneficiary that, on the
21 date the beneficiary's qualification is determined, is a

1 distributee or permissible distributee of trust income or
2 principal.

3 (h) "Environmental law" means a federal, state or local law,
4 rule, regulation or ordinance relating to protection of the
5 environment.

6 (i) "Grantor" means a person, including a testator, who
7 creates, or contributes property to a trust. If more than one
8 person creates or contributes property to a trust, each person is
9 a grantor of the portion of the trust property attributable to that
10 person's contribution except to the extent another person has the
11 power to revoke or withdraw that portion.

12 (j) "Guardian" means a person appointed by the court who is
13 responsible for the personal affairs of a protected person or a
14 parent to make decisions regarding the support, care, education,
15 health and welfare of a minor. The term does not include a guardian
16 ad litem.

17 (k) "Interested person" means heirs, devisees, children,
18 spouses, creditors, beneficiaries and any others having a property
19 right in or claim against a trust or the property in a trust. It
20 also includes persons having priority for appointment as personal
21 representative and other fiduciaries representing interested
22 persons. The meaning as it relates to particular persons may vary

1 from time to time and must be determined according to the
2 particular purposes of, and matter involved in, any proceeding.

3 (l) "Interests of the beneficiaries" means the beneficial
4 interests provided in the terms of the trust.

5 (m) "Internal Revenue Code" or "Internal Revenue Code of 1986"
6 means the Internal Revenue Code of 1986 codified in 26 U.S.C. 1 et
7 seq., as amended and in effect on January 1, 2011.

8 (n) "Jurisdiction" with respect to a geographic area, includes
9 a state or country.

10 (o) "Person" means an individual, corporation, business trust,
11 estate, trust, partnership, limited liability company, association,
12 joint venture, unincorporated nonprofit association, charitable
13 organization, government, governmental subdivision, agency or
14 instrumentality, public corporation or any other legal or
15 commercial entity.

16 (p) "Power of withdrawal" means a presently exercisable
17 general power of appointment other than a power:

18 (1) Exercisable by a trustee and limited by an ascertainable
19 standard; or

20 (2) Exercisable by another person only upon consent of the
21 trustee or a person holding an adverse interest.

1 (q) "Property" means anything that may be the subject of
2 ownership, whether real or personal, legal or equitable or any
3 interest therein.

4 (r) "Qualified beneficiary" means a beneficiary who, on the
5 date the beneficiary's qualification is determined:

6 (1) Is a distributee or permissible distributee of trust
7 income or principal;

8 (2) Would be a distributee or permissible distributee of trust
9 income or principal if the interests of the distributees described
10 in subparagraph (A) terminated on that date without causing the
11 trust to terminate; or

12 (3) Would be a distributes or permissible distributes of trust
13 income or principal if the trust terminated on that date.

14 (s) "Revocable," as applied to a trust, means revocable by the
15 grantor without the consent of the trustee or a person holding an
16 adverse interest.

17 (t) "Spendthrift provision" means a term of a trust which
18 restrains both voluntary and involuntary transfer of a
19 beneficiary's interest.

20 (u) "State" means a state of the United States, the District
21 of Columbia, Puerto Rico, the United States Virgin Islands or any
22 territory or insular possession subject to the jurisdiction of the

1 United States. The term includes an Indian tribe or band
2 recognized by federal law or formally acknowledged by a state.

3 (v) "Terms of a trust" means the manifestation of the
4 grantor's intent regarding a trust's provisions as expressed in the
5 trust instrument or as may be established by other evidence that
6 would be admissible in a judicial proceeding.

7 (w) "Trust instrument" means a writing, including a will,
8 executed by the grantor that contains terms of the trust, including
9 any amendments thereto.

10 (x) "Trustee" includes an original, additional, successor
11 trustee, and a cotrustee.

12 (y) "Writing" or "written instrument" does not include an
13 electronic record or electronic signature as provided in chapter
14 39A of this code.

15 **§44D-1-104. Knowledge.**

16 (a) Subject to subsection (b) of this section, a person has
17 knowledge of a fact if the person:

18 (1) Has actual knowledge of it;

19 (2) Has received a notice or notification of it; or

20 (3) From all the facts and circumstances known to the person
21 at the time in question, has reason to know it.

1 (b) An organization that conducts activities through employees
2 has notice or knowledge of a fact involving a trust only from the
3 time the information was received by an employee having
4 responsibility to act for the trust, or would have been brought to
5 the employee's attention if the organization had exercised
6 reasonable diligence. An organization exercises reasonable
7 diligence if it maintains reasonable routines for communicating
8 significant information to the employee having responsibility to
9 act for the trust and there is reasonable compliance with the
10 routines. Reasonable diligence does not require an employee of the
11 organization to communicate information unless the communication is
12 part of the individual's regular duties or the individual knows a
13 matter involving the trust would be materially affected by the
14 information.

15 **§44D-1-105. Default and mandatory rules.**

16 (a) Except as otherwise provided in the terms of the trust
17 instrument, this chapter governs the duties and powers of a
18 trustee, relations among trustees, and the rights and interests of
19 a beneficiary.

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

22 (1) The requirements for creating a trust;

1 (2) The duty of a trustee to act in good faith and in
2 accordance with the terms and purposes of the trust;

3 (3) The requirement that a trust and its terms have a purpose
4 that is lawful, not contrary to public policy, and possible to
5 achieve;

6 (4) The power of the court to modify or terminate a trust
7 under section four hundred ten through four hundred sixteen,
8 article four of this chapter;

9 (5) The effect of a spendthrift provision and the rights of
10 certain creditors and assignees to reach a trust as provided in
11 article five of this chapter;

12 (6) The power of the court under section seven hundred two,
13 article seven of this chapter to require, dispense with, or modify
14 or terminate a bond;

15 (7) The power of the court under subsection (b), section seven
16 hundred eight, article seven of this chapter, to adjust a trustee's
17 compensation specified in the terms of the trust instrument which
18 is unreasonably low or high;

19 (8) The effect of an exculpatory term under section one
20 thousand eight, article ten of this chapter;

1 (9) The rights under sections one thousand ten through one
2 thousand thirteen, article ten of this chapter, of a person other
3 than a trustee or beneficiary;

4 (10) Periods of limitation for commencing a judicial
5 proceeding;

6 (11) The power of the court to take action and exercise
7 jurisdiction as may be necessary in the interests of justice; and

8 (12) The subject-matter jurisdiction of the court and venue
9 for commencing a proceeding as provided in sections two hundred
10 three and two hundred four, article two of this chapter.

11 **§44D-1-106. Common law of trusts; principles of equity.**

12 The common law of trusts and principles of equity supplement
13 this chapter, except to the extent modified by this chapter or
14 another statute of this state.

15 **§44D-1-107. Governing law.**

16 The meaning and effect of the terms of a trust are determined
17 by:

18 (1) The law of the jurisdiction designated in the terms of the
19 trust instrument, including terms which may provide for change of
20 jurisdiction from time to time, unless the designation of that
21 jurisdiction's law is contrary to a strong public policy of the

1 jurisdiction having the most significant relationship to the matter
2 at issue; or

3 (2) In the absence of a controlling designation in the terms
4 of the trust instrument, the law of the jurisdiction in which the
5 grantor is domiciled when the trust becomes irrevocable.

6 **§44D-1-108. Principal place of administration.**

7 (a) Without precluding other means for establishing a
8 sufficient connection with the designated jurisdiction, terms of a
9 trust designating the principal place of administration are valid
10 and controlling if:

11 (1) A trustee's principal place of business is located in or
12 a trustee is a resident of the designated jurisdiction; or

13 (2) All or part of the administration occurs in the designated
14 jurisdiction.

15 (b) Without precluding the right of the court to order,
16 approve, or disapprove a transfer, the trustee, may transfer the
17 trust's principal place of administration to another state or to a
18 jurisdiction outside of the United States that is appropriate to
19 the trust's purposes, its administration and the interests of the
20 beneficiaries.

21 (c) When the proposed transfer of a trust's principal place of
22 administration is to another state or to a jurisdiction outside of

1 the United States, the trustee shall notify the current
2 beneficiaries of a proposed transfer of a trust's principal place
3 of administration not less than sixty days before initiating the
4 transfer. A corporate trustee that maintains a place of business
5 in West Virginia where one or more trust officers are available on
6 a regular basis for personal contact with trust customers and
7 beneficiaries has not transferred its principal place of
8 administration merely because all or a significant portion of the
9 administration of the trust is performed outside West Virginia.

10 The notice of proposed transfer must include:

11 (1) The name of the jurisdiction to which the principal place
12 of administration is to be transferred;

13 (2) The address and telephone number at the new location at
14 which the trustee can be contacted;

15 (3) An explanation of the reasons for the proposed transfer;

16 (4) The date on which the proposed transfer is anticipated to
17 occur; and

18 (5) The date, not less than sixty days after the giving of the
19 notice, by which the current beneficiary must notify the trustee of
20 an objection to the proposed transfer.

21 (d) The authority of a trustee under this section to transfer
22 a trust's principal place of administration to another state or to

1 a jurisdiction outside the United States terminates if a current
2 beneficiary notifies the trustee of an objection to the proposed
3 transfer on or before the date specified in the notice.

4 (e) In connection with a transfer of the trust's principal
5 place of administration, the trustee may transfer some or all of
6 the trust property to a successor trustee designated in the terms
7 of the trust instrument or appointed pursuant to section seven
8 hundred four, article seven of this chapter.

9 **§44D-1-109. Methods and waiver of notice.**

10 (a) Notice to a person under this chapter or the sending of a
11 document to a person under this chapter must be accomplished in a
12 manner reasonably suitable under the circumstances and likely to
13 result in receipt of the notice or document. Permissible methods
14 of notice or for sending a document include first-class mail,
15 personal delivery, delivery to the person's last known place of
16 residence or place of business, or a properly directed electronic
17 message.

18 (b) Notice otherwise required under this chapter or a document
19 otherwise required to be sent under this chapter need not be
20 provided to a person whose identity or location is unknown to and
21 not reasonably ascertainable by the trustee.

1 (c) Notice under this chapter or the sending of a document
2 under this chapter may be waived by the person to be notified or
3 sent the document.

4 (d) Notice of a judicial proceeding shall be given as provided
5 in the applicable rules of civil procedure.

6 **§44D-1-110. Others treated as qualified beneficiaries.**

7 (a) Whenever notice to qualified or current beneficiaries of
8 a trust is required under this chapter, the trustee shall also give
9 notice to any other beneficiary who has sent the trustee a request
10 for notice.

11 (b) A charitable organization expressly designated to receive
12 distributions under the terms of a charitable trust has the rights
13 of a qualified beneficiary under this chapter.

14 (c) A person appointed to enforce a trust created for the care
15 of an animal or another noncharitable purpose as provided in
16 section four hundred eight or four hundred nine, article four of
17 this chapter has the rights of a qualified beneficiary under this
18 chapter.

19 **§44D-1-111. Nonjudicial settlement agreements.**

20 (a) For purposes of this section "interested persons" means
21 persons whose consent would be required in order to achieve a
22 binding settlement were the settlement to be approved by the court.

1 (b) Except as otherwise provided in subsection (c) of this
2 section, interested persons may enter into a binding nonjudicial
3 settlement agreement with respect to any matter involving a trust,
4 including, but not limited to:

5 (1) The interpretation or construction of the terms of the
6 trust;

7 (2) The approval of a trustee's report or accounting or waiver
8 of the preparation of a trustee's report or accounting;

9 (3) Direction to a trustee to refrain from performing a
10 particular act or the grant to a trustee of any necessary or
11 desirable power;

12 (4) The resignation or appointment of a trustee and the
13 determination of a trustee's compensation;

14 (5) Transfer of a trust's principal place of administration;

15 (6) Liability or release from liability of a trustee for an
16 action relating to the trust;

17 (7) Questions relating to the property or an interest in
18 property held as part of a trust;

19 (8) An investment decision, policy, plan or program of the
20 trustee;

21 (9) The grant to a trustee of any necessary or desirable
22 power;

1 (10) The exercise or nonexercise of any power by a trustee;

2 (11) An action or proposed action by or against a trust or
3 trustee;

4 (12) The modification or termination of a trust; and

5 (13) Any other matter concerning the administration of a
6 trust.

7 (c) A nonjudicial settlement agreement is valid only to the
8 extent it does not violate a material purpose of the trust and
9 includes terms and conditions that could be properly approved by
10 the court under this chapter or other applicable law.

11 (d) Any interested person may request the court to approve a
12 nonjudicial settlement agreement, to determine whether the
13 representation as provided in article three of this chapter was
14 adequate, and to determine whether the agreement contains terms and
15 conditions the court could have properly approved.

16 **§44D-1-112. Rules of construction.**

17 The rules of construction that apply in this state to the
18 interpretation of and disposition of property by will also apply as
19 appropriate to the interpretation of the terms of a trust and the
20 disposition of the trust property.

21 **ARTICLE 2. JUDICIAL PROCEEDINGS.**

22 **§44D-2-201. Role of court in administration of trust.**

1 (a) The court may intervene in the administration of a trust
2 to the extent its jurisdiction is invoked by an interested person
3 or as provided by law.

4 (b) A trust is not subject to continuing judicial supervision
5 unless ordered by the court.

6 (c) A judicial proceeding involving a trust may relate to any
7 matter involving the trust's administration, including a request
8 for instructions and an action to declare rights.

9 **§44D-2-202. Jurisdiction over trustee and beneficiary.**

10 (a) By accepting the trusteeship of a trust having its
11 principal place of administration in this state or by moving the
12 principal place of administration to this state, the trustee
13 submits personally to the jurisdiction of the courts of this state
14 regarding any matter involving the trust.

15 (b) With respect to their interests in the trust, the
16 beneficiaries of a trust having its principal place of
17 administration in this state are subject to the jurisdiction of the
18 courts of this state regarding any matter involving the trust. By
19 accepting a distribution from such a trust, the recipient submits
20 personally to the jurisdiction of the courts of this state
21 regarding any matter involving the trust.

22 (c) This section does not preclude other methods of obtaining

1 jurisdiction over a trustee, beneficiary or other person receiving
2 property from the trust.

3 **§44D-2-203. Subject-matter jurisdiction.**

4 The court has exclusive jurisdiction of proceedings in this
5 state brought by a trustee or beneficiary concerning the
6 administration of a trust.

7 **§44D-2-204. Venue.**

8 (a) Except as otherwise provided in subsection (b) of this
9 section, venue for a judicial proceeding involving a trust is in
10 the county of this state in which the trust's principal place of
11 administration is or will be located unless the proceeding is to
12 recover land, determine title to the land or subject it to a debt,
13 determine the county where the land or any part may be, or, if the
14 trust is created by will and the estate is not yet closed, in the
15 county in which the decedent's estate is being administered.

16 (b) If a trust has no trustee, venue for a judicial proceeding
17 for the appointment of a trustee is in a county of this state in
18 which a beneficiary resides, in a county in which any trust
19 property is located, or if the trust is created by will, in the
20 county in which the decedent's estate was or is being administered.

21 **ARTICLE 3. REPRESENTATION.**

22 **§44D-3-301. Representation; basic effect.**

1 (a) Notice to a person who may represent and bind another
2 person under this chapter has the same effect as if notice were
3 given directly to the other person.

4 (b) The consent of a person who may represent and bind another
5 person under this chapter is binding on the person represented
6 unless the person represented objects to the representation by
7 notifying the trustee or the representative before the consent
8 would otherwise have become effective.

9 (c) Except as otherwise provided in section four hundred
10 eleven, article four of this chapter, and section six hundred two,
11 article six of this chapter, a person who under this article may
12 represent a grantor who lacks capacity may receive notice and give
13 a binding consent on the grantor's behalf.

14 (d) A grantor may not represent and bind a beneficiary under
15 this article with respect to the termination or modification of a
16 trust under subsection (a), section four hundred eleven, article
17 four of this chapter.

18 **§44D-3-302. Representation by holder of general testamentary**
19 **power of appointment.**

20 To the extent there is no conflict of interest between the
21 holder of a general testamentary power of appointment and the
22 persons represented with respect to the particular question or

1 dispute, the holder may represent and bind persons whose interests,
2 as permissible appointees, takers in default, or otherwise, are
3 subject to the power.

4 **§44D-3-303. Representation by fiduciaries and parents.**

5 To the extent there is no conflict of interest between the
6 representative and the person represented or among those being
7 represented with respect to a particular question or dispute:

8 (1) A conservator or guardian of the protected person may
9 represent and bind the estate that the fiduciary controls;

10 (2) An agent having authority to act with respect to the
11 particular question or dispute may represent and bind the
12 principal;

13 (3) A trustee may represent and bind the beneficiaries of the
14 trust;

15 (4) A personal representative of a decedent's estate may
16 represent and bind persons interested in the estate;

17 (5) A parent may represent and bind the parent's minor or
18 unborn child if a conservator or guardian for the child has not
19 been appointed; and

20 (6) If a minor or unborn person is not otherwise represented
21 under this section, a grandparent or more remote ancestor may
22 represent and bind that minor or unborn person.

1 **§44D-3-304. Representation by person having substantially**
2 **identical interest.**

3 Unless otherwise represented, a minor, incapacitated or unborn
4 individual, or a person whose identity or location is unknown and
5 not reasonably ascertainable, may be represented by and bound by
6 another person having a substantially identical interest with
7 respect to the particular question or dispute, but only to the
8 extent there is no conflict of interest with respect to the
9 particular question or dispute between the representative and the
10 person represented.

11 **§44D-3-305. Appointment of representative.**

12 (a) If the court determines in a judicial proceeding that an
13 interest is not represented under this chapter, or that the
14 otherwise available representation might be inadequate, the court
15 may appoint a representative to receive notice, give consent, and
16 otherwise represent, bind, and act on behalf of a minor,
17 incapacitated or unborn individual, or a person whose identity or
18 location is unknown. A representative may be appointed to
19 represent several persons or interests.

20 (b) A representative may act on behalf of the individual
21 represented with respect to any matter arising under this chapter,

1 whether or not a judicial proceeding concerning the trust is
2 pending.

3 (c) In making decisions, a representative may consider general
4 benefit accruing to the living members of the individual's family.

5 **ARTICLE 4. CREATION, VALIDITY, MODIFICATION AND TERMINATION OF**
6 **TRUST.**

7 **§44D-4-401. Methods of creating trust.**

8 (a) A trust may be created by:

9 (1) Transfer of property to another person as trustee during
10 the grantor's lifetime by the grantor or by will or by other
11 disposition taking effect upon the grantor's death;

12 (2) Declaration by the owner of property that the owner holds
13 identifiable property as trustee;

14 (3) Exercise of a power of appointment in favor of a trustee;
15 or

16 (4) An order of the court.

17 (b) During the grantor's lifetime, a trust may also be created
18 by the grantor's agent acting in accordance with authority granted
19 under a durable power of attorney which expressly authorizes the
20 agent to create a trust on the grantor's behalf or which expressly
21 authorizes the agent to fund an existing trust of the grantor on
22 the grantor's behalf.

1 **§44D-4-402. Requirement for creation.**

2 (a) Except as created by an order of the court, a trust is
3 created only if:

4 (1) The grantor has capacity to create a trust;

5 (2) The grantor indicates an intention, in writing, to create
6 the trust;

7 (3) The trust has a definite beneficiary or is:

8 (A) A charitable trust;

9 (B) A trust for the care of an animal, as provided in section
10 four hundred eight of this article; or

11 (C) A trust for a noncharitable purpose, as provided in
12 section four hundred nine, article four of this chapter;

13 (4) The trustee has duties to perform; and

14 (5) The same person is not the sole trustee and sole
15 beneficiary.

16 (b) A beneficiary is definite if the beneficiary can be
17 ascertained now or in the future, subject to any applicable rule
18 against perpetuities.

19 (c) A power in a trustee to select a beneficiary from an
20 indefinite class is valid. If the power is not exercised within a
21 reasonable time, the power fails and the property subject to the

1 power passes to the persons who would have taken the property had
2 the power not been conferred.

3 (d) Notwithstanding the foregoing:

4 (1) In accordance with the provisions of section eight,
5 article three of chapter forty-one of this code, a trust is valid
6 regardless of the existence, value or character of the corpus of
7 the trust.

8 (2) The grantor need not have capacity to create a trust if
9 the trust is created in writing during the grantor's lifetime by
10 the grantor's agent acting in accordance with authority granted
11 under a durable power of attorney which expressly authorizes the
12 agent to create a trust on the grantor's behalf.

13 (e) A trust is not invalid or terminated, and title to trust
14 assets is not merged, because the trustee or trustees are the same
15 person or persons as the beneficiaries of the trust.

16 **§44D-4-403. Trusts created in other jurisdictions.**

17 A trust not created by will is validly created if its creation
18 complies with the law of the jurisdiction in which the trust
19 instrument was executed, or the law of the jurisdiction in which,
20 at the time of creation:

21 (1) The grantor was domiciled, had a place of abode, or was a
22 national;

1 (2) A trustee was domiciled or had a place of business; or

2 (3) Any trust property was located.

3 **§44D-4-404. Trust purposes.**

4 A trust may be created only to the extent its purposes are
5 lawful, not contrary to public policy and possible to achieve. A
6 trust and its terms must be for the benefit of its beneficiaries.

7 **§44D-4-405. Charitable purposes; enforcement.**

8 (a) A charitable trust may be created for the relief of
9 poverty, the advancement of education or religion, the promotion of
10 health, governmental or municipal purposes or other purposes the
11 achievement of which is beneficial to the community.

12 (b) If the terms of a charitable trust do not indicate a
13 particular charitable purpose or beneficiary, upon petition by the
14 trustee or a person having a special interest in the trust, the
15 court may select one or more charitable purposes or beneficiaries.
16 The selection must be consistent with the grantor's intention to
17 the extent it can be ascertained.

18 (c) The grantor of a charitable trust, trustee or a person
19 having a special interest in the trust, may maintain a proceeding
20 to enforce the trust.

21 (d) This section is not intended to override the provisions of
22 section four, article one, chapter thirty-five of this code,

1 concerning conveyances, devises, dedications, gifts or bequests to
2 religious organizations and to the extent there is a conflict with
3 that section, this section controls.

4 **§44D-4-406. Creation of trust induced by fraud, duress or undue**
5 **influence.**

6 A trust is void to the extent its creation was induced by
7 fraud, duress or undue influence. As used in this section, "fraud,"
8 "duress" and "undue influence" have the same meanings for trust
9 validity purposes as they have for purposes of determining the
10 validity of a will.

11 **§44D-4-407. Oral trusts unenforceable.**

12 Oral trusts are unenforceable in this state.

13 **§44D-4-408. Trust for care of animal.**

14 (a) A trust may be created to provide for the care of an
15 animal alive during the grantor's lifetime. The trust terminates
16 upon the death of the animal or, if the trust was created to
17 provide for the care of more than one animal alive during the
18 grantor's lifetime, upon the death of the last surviving animal.

19 (b) A trust authorized by this section may be enforced by a
20 person appointed in the terms of the trust instrument or, if no
21 person is so appointed, by a person appointed by the court. A
22 person having an interest in the welfare of the animal may request

1 the court to appoint a person to enforce the trust or to remove a
2 person appointed.

3 (c) Property of a trust authorized by this section may be
4 applied only to its intended use, except to the extent the court
5 determines that the value of the trust property exceeds the amount
6 required for the intended use. Except as otherwise provided in the
7 terms of the trust instrument, property not required for the
8 intended use must be distributed to the grantor, if then living,
9 otherwise to the grantor's successors in interest.

10 **§44D-4-409. Noncharitable trust without ascertainable beneficiary.**

11 Except as otherwise provided in section four hundred eight of
12 this article, or by the provisions of article five-a, chapter
13 thirty-five of this code, or by another statute, the following
14 rules apply:

15 (1) A trust may be created for a noncharitable purpose without
16 a definite or definitely ascertainable beneficiary or for a
17 noncharitable but otherwise valid purpose to be selected by the
18 trustee. The trust may not be enforced for more than the period set
19 forth in section one, article one-a, chapter thirty-six of this
20 code.

1 (2) A trust authorized by this section may be enforced by a
 2 person appointed in the terms of the trust instrument or, if no
 3 person is so appointed, by a person appointed by the court.

4 (3) Property of a trust authorized by this section may be
 5 applied only to its intended use, except to the extent the court
 6 determines that the value of the trust property exceeds the amount
 7 required for the intended use. Except as otherwise provided in the
 8 terms of the trust instrument, property not required for the
 9 intended use must be distributed to the grantor, if then living,
 10 otherwise to the grantor's successors in interest.

11 **§44D-4-410. Modification or termination of trust; proceedings for**
 12 **approval or disapproval.**

13 (a) In addition to the methods of termination prescribed by
 14 sections four hundred eleven through four hundred fourteen, article
 15 four of this chapter, a trust terminates to the extent the trust is
 16 revoked or expires pursuant to its terms, no purpose of the trust
 17 remains to be achieved, or the purposes of the trust have become
 18 unlawful, contrary to public policy, or impossible to achieve.

19 (b) A proceeding to approve or disapprove a proposed
 20 modification or termination under sections four hundred eleven
 21 through four hundred sixteen of this article, or trust combination
 22 or division under section four hundred seventeen of this article,

1 may be commenced by a trustee or beneficiary, and a proceeding to
2 approve or disapprove a proposed modification or termination under
3 section four hundred eleven of this article may be commenced by the
4 grantor. The grantor of a charitable trust may maintain a
5 proceeding to modify the trust under section four hundred thirteen
6 of this article.

7 **§44D-4-411. Modification or termination of noncharitable**
8 **irrevocable trust by consent.**

9 (a) If, upon petition, the court finds that the grantor and
10 all beneficiaries consent to the modification or termination of a
11 noncharitable irrevocable trust, the court shall approve the
12 modification or termination even if the modification or termination
13 is inconsistent with a material purpose of the trust. A grantor's
14 power to consent to a trust's modification or termination may be
15 exercised by an agent under a power of attorney only to the extent
16 expressly authorized by the power of attorney or the terms of the
17 trust instrument; by the grantor's conservator with the approval of
18 the court supervising the conservatorship if an agent is not so
19 authorized; or by the grantor's guardian with the approval of the
20 court supervising the guardianship if an agent is not so authorized
21 and a conservator has not been appointed.

1 (b) A noncharitable irrevocable trust may be terminated upon
2 consent of all of the beneficiaries if the court concludes that
3 continuance of the trust is not necessary to achieve any material
4 purpose of the trust. A noncharitable irrevocable trust may be
5 modified upon consent of all of the beneficiaries if the court
6 concludes that modification is not inconsistent with a material
7 purpose of the trust.

8 (c) A spendthrift provision in the terms of the trust
9 instrument is presumed to constitute a material purpose of the
10 trust.

11 (d) Upon termination of a trust under subsection (a) or (b) of
12 this section, the trustee shall distribute the trust property as
13 agreed by the beneficiaries.

14 (e) If all of the beneficiaries do not consent to a proposed
15 modification or termination of the trust under subsection (a) or
16 (b) of this section, the modification or termination including any
17 distributions of the trust property, may be approved by the court
18 if the court is satisfied that:

19 (1) If all of the beneficiaries had consented, the trust could
20 have been modified or terminated under this section; and

21 (2) The interests of a beneficiary who does not consent will
22 be adequately protected.

1 **§44D-4-412. Modification or termination because of unanticipated**
2 **circumstances or inability to administer trust**
3 **effectively.**

4 (a) The court may modify the administrative or dispositive
5 terms of a trust or terminate the trust if, because of
6 circumstances not anticipated by the grantor, modification or
7 termination will further the purposes of the trust. To the extent
8 practicable, the modification must be made in accordance with the
9 grantor's probable intention.

10 (b) The court may modify the administrative terms of a trust
11 if continuation of the trust on its existing terms would be
12 impracticable or wasteful or impair the trust's administration.

13 (c) Upon termination of a trust under this section, the
14 trustee shall distribute the trust property in a manner consistent
15 with the purposes of the trust.

16 **§44D-4-413. Cy pres.**

17 (a) Except as otherwise provided in subsection (b) of this
18 section, if a particular charitable purpose becomes unlawful,
19 impracticable, impossible to achieve, or wasteful:

20 (1) The charitable trust does not fail, in whole or in part;

21 (2) The charitable trust property does not revert to the
22 grantor or the grantor's successors in interest; and

1 (3) Upon petition by a trustee or a person having a special
2 interest in the trust, the court shall apply cy pres to fulfill as
3 nearly as possible the grantor's charitable intention, whether it
4 be general or specific.

5 (b) A provision in the terms of a charitable trust that would
6 result in distribution of the trust property to a noncharitable
7 beneficiary prevails over the power of the court under subsection
8 (a) of this section to apply cy pres to modify or terminate the
9 trust only if, when the provision takes effect:

10 (1) The charitable trust property is to revert to the grantor
11 and the grantor is still living; or

12 (2) Fewer than twenty-one years have elapsed since the date of
13 the trust's creation.

14 **§44D-4-414. Modification or termination of uneconomic trust.**

15 (a) After notice to the qualified beneficiaries, the trustee
16 of a trust consisting of a noncharitable trust property having a
17 total value less than \$100,000 may terminate the trust, without the
18 necessity of court approval, if the trustee concludes that the
19 value of the trust property is insufficient to justify the cost of
20 administration.

21 (b) The court may modify or terminate a trust or remove the
22 trustee and appoint a different trustee if it determines that the

1 value of the trust property is insufficient to justify the cost of
2 administration.

3 (c) Upon termination of a trust under this section, the
4 trustee shall distribute the trust property in a manner consistent
5 with the purposes of the trust.

6 (d) This section does not apply to an easement for
7 conservation or preservation.

8 **§44D-4-415. Reformation to correct mistakes.**

9 The court may reform the terms of a trust, even if
10 unambiguous, to conform the terms to the grantor's intention if it
11 is proved by preponderance of the evidence that both the grantor's
12 intent and the terms of the trust instrument were affected by a
13 mistake of fact or law, whether in expression or inducement.

14 **§44D-4-416. Modification to achieve grantor's tax objectives.**

15 To achieve the grantor's tax objectives, the court may modify
16 the terms of a trust in a manner that is not contrary to the
17 grantor's probable intention. The court may provide that the
18 modification has retroactive effect.

19 **§44D-4-417. Combination and division of trusts.**

20 After notice to the qualified beneficiaries, a trustee may
21 combine two or more trusts into a single trust or divide a trust
22 into two or more separate trusts, if the result does not impair

1 rights of any beneficiary or adversely affect achievement of the
2 purposes of the trust.

3 **ARTICLE 5. CREDITOR'S CLAIMS; SPENDTHRIFT AND DISCRETIONARY TRUSTS.**

4 **§44D-5-501. Rights of beneficiary's creditor or assignee.**

5 To the extent a beneficiary's interest is not subject to a
6 spendthrift provision, the court may authorize a creditor or
7 assignee of the beneficiary to reach the beneficiary's interest in
8 a trust by execution or other process against the present or future
9 distributions to or for the benefit of the beneficiary. The court
10 may limit the award to relief as appropriate under the
11 circumstances.

12 **§44D-5-502. Spendthrift provision.**

13 (a) A spendthrift provision contained in a trust instrument is
14 valid if it contains language substantially to the effect that it
15 restrains both voluntary and involuntary transfers of a
16 beneficiary's interest.

17 (b) A term of a trust instrument providing that the interest
18 of a beneficiary is held subject to a "spendthrift trust," or words
19 of similar import, is sufficient to restrain both voluntary and
20 involuntary transfer of the beneficiary's interest.

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

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

4 **§44D-5-503. Exceptions to spendthrift provision.**

5 (a) In this section, "child" includes any person for whom an
6 order or judgment for child support has been entered in this or
7 another state.

8 (b) A spendthrift provision is unenforceable against:

9 (1) A beneficiary's child, who has a judgment or court order
10 against the beneficiary for child support;

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

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

15 (c) A claimant against whom a spendthrift provision cannot be
16 enforced may obtain from a court an order attaching present or
17 future distributions to or for the benefit of the beneficiary. The
18 court may limit the award to such relief as is appropriate under
19 the circumstances.

20 **§44D-5-504. Discretionary trusts; effect of standard.**

1 (a) In this section, "child" includes any person for whom an
2 order or judgment for child support has been entered in this or
3 another state.

4 (b) Except as otherwise provided in subsection (c) of this
5 section, whether or not a trust instrument contains a spendthrift
6 provision, a creditor of a beneficiary may not compel a
7 distribution that is subject to the trustee's discretion, even if:

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

10 (2) The trustee has abused the discretion.

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

13 (1) A distribution may be ordered by the court to satisfy a
14 judgment or court order against the beneficiary for child support
15 the beneficiary's child; and

16 (2) The court shall direct the trustee to pay to the child,
17 spouse or former spouse such amount as is equitable under the
18 circumstances but not more than the amount the trustee would have
19 been required to distribute to or for the benefit of the
20 beneficiary had the trustee complied with the standard or not
21 abused the discretion.

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

4 (e) A creditor may not reach the interest of a beneficiary who
5 is also a trustee or cotrustee or otherwise compel a distribution,
6 if the trustee's discretion to make distributions for the trustee's
7 own benefit is limited by an ascertainable standard.

8 **§44D-5-505. Creditor's claim against grantor.**

9 (a) Whether or not the terms of a trust instrument contain a
10 spendthrift provision, the following rules apply:

11 (1) During the lifetime of the grantor, the property of a
12 revocable trust is subject to claims of the grantor's creditors.

13 (2) During the lifetime of the grantor, with respect to an
14 irrevocable trust, a creditor or assignee of the grantor may reach
15 the maximum amount that can be distributed to or for the grantor's
16 benefit. If a trust has more than one grantor, the amount the
17 creditor or assignee of a particular grantor may reach may not
18 exceed the grantor's interest in the portion of the trust
19 attributable to that grantor's contribution.

20 (3) After the death of a grantor, and subject to the grantor's
21 right to direct the source from which liabilities will be paid, the
22 property of a trust that was revocable at the grantor's death is

1 subject to claims of, to the extent the grantor's probate estate is
2 inadequate to satisfy them:

3 (A) The costs and expenses of administration of the grantor's
4 estate;

5 (B) Reasonable funeral expenses;

6 (C) Debts and taxes with preference under federal law;

7 (D) Unpaid child support which is due and owing at the time of
8 the decedent's death;

9 (E) Debts and taxes with preference under other laws of the
10 State of West Virginia;

11 (F) Reasonable and necessary medical and hospital expenses of
12 the last illness of the decedent, including compensation for
13 persons attending the decedent during his or her last illness; and

14 (G) All other claims.

15 (b) For purposes of this section:

16 (1) During the period the power may be exercised, the holder
17 of a power of withdrawal is treated in the same manner as the
18 grantor of a revocable trust to the extent of the property subject
19 to the power; and

20 (2) Upon the lapse, release or waiver of the power, the holder
21 is treated as the grantor of the trust only to the extent the value
22 of the property affected by the lapse, release or waiver exceeds

1 the greater of the amount specified in Section 2041(b)(2), Section
2 2503(b) or Section 2514(e) of the Internal Revenue Code.

3 **§44D-5-506. Overdue distribution.**

4 (a) In this section, "mandatory distribution" means a
5 distribution of income or principal which the trustee is required
6 to make to a beneficiary under the terms of the trust instrument,
7 including a distribution upon termination of the trust. The term
8 does not include a distribution subject to the exercise of the
9 trustee's discretion even if:

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

12 (2) The terms of the trust instrument authorizing a
13 distribution couple language of discretion with language of
14 direction.

15 (b) Whether or not a trust contains a spendthrift provision,
16 a creditor or assignee of a beneficiary may reach a mandatory
17 distribution of income or principal, including a distribution upon
18 termination of the trust, if the trustee has not made the
19 distribution to the beneficiary within a reasonable time after the
20 designated distribution date.

21 **§44D-5-507. Personal obligations of trustee.**

1 Trust property is not subject to personal obligations of the
2 trustee, even if the trustee becomes insolvent or bankrupt.

3 **ARTICLE 6. REVOCABLE TRUSTS.**

4 **§44D-6-601. Capacity of grantor of revocable trust.**

5 The capacity required to create, amend, revoke or add property
6 to a revocable trust, or to direct the actions of the trustee of a
7 revocable trust, is the same as that required to make a will.

8 **§44D-6-602. Revocation or amendment of revocable trust.**

9 (a) Unless the terms of a trust expressly provide that the
10 trust is irrevocable, the grantor may revoke or amend the trust.
11 This subsection does not apply to a trust created under an
12 instrument executed before the effective date of this chapter.

13 (b) Unless the terms of a trust provide otherwise, if a
14 revocable trust is created or funded by more than one grantor:

15 (1) To the extent the trust consists of community property,
16 the trust may be revoked by either spouse acting alone but may be
17 amended only by joint action of both spouses;

18 (2) To the extent the trust consists of property other than
19 community property, each grantor may revoke or amend the trust with
20 regard the portion of the trust property attributable to that
21 grantor's contribution; and

1 (3) Upon the revocation or amendment of the trust by fewer
2 than all of the grantors, the trustee shall promptly notify the
3 other grantors of the revocation or amendment.

4 (c) The grantor may revoke or amend a revocable trust:

5 (1) By substantially complying with a method provided in the
6 terms of the trust instrument; or

7 (2) If the terms of the trust instrument do not provide a
8 method, by any other method manifesting clear and convincing
9 evidence of the grantor's intent.

10 (d) Upon revocation of a revocable trust, the trustee shall
11 deliver the trust property as the grantor directs.

12 (e) A grantor's powers with respect to revocation, amendment,
13 or distribution of trust property may be exercised by an agent
14 under a power of attorney only to the extent expressly authorized
15 by the terms of the trust instrument or the power.

16 (f) A conservator of the grantor or, if no conservator has
17 been appointed, a guardian of the grantor may exercise a grantor's
18 powers with respect to revocation, amendment or distribution of
19 trust property only with the approval of the court supervising the
20 conservatorship or guardianship.

21 (g) A trustee who does not know that a trust has been revoked
22 or amended is not liable to the grantor or grantor's successors in

1 interest for distributions made and other actions taken on the
2 assumption that the trust had not been amended or revoked.

3 (h) No trust which is otherwise irrevocable because the trust
4 instrument expressly provides or states that the trust is
5 irrevocable is or becomes revocable by the grantor because the
6 grantor is the sole beneficiary of the trust.

7 **§44D-6-603. Grantor's powers; powers of withdrawal.**

8 (a) While a trust is revocable and the grantor has capacity to
9 revoke the trust, rights of the beneficiaries are subject to the
10 control of, and the duties of the trustee are owed exclusively to,
11 the grantor.

12 (b) During the period the power may be exercised, the holder
13 of a power of withdrawal has the rights of a grantor of a revocable
14 trust under this section to the extent of the property subject to
15 the power.

16 **§44D-6-604. Limitation on action contesting validity of revocable**
17 **trust; distribution of trust property.**

18 (a) (1) An interested person may commence a judicial
19 proceeding to contest the validity of a trust that was revocable at
20 the grantor's death within the earlier of:

21 (A) Two years after the grantor's death; or

1 (B) Six months after the trustee has sent the beneficiary a
2 copy of the trust instrument and a notice informing the beneficiary
3 of the trust's existence, of the trustee's name and address, and of
4 the time allowed for commencing a proceeding.

5 (2) Notwithstanding subdivision (1) of this subsection:

6 (A) If the beneficiary is under the age of eighteen years or
7 is a convict or mentally incapacitated person, the beneficiary has
8 one year after he or she becomes of age or the disability ceases to
9 commence a judicial proceeding; and

10 (B) If the beneficiary resided out of the state at the time
11 the beneficiary received the trust instrument and notice, the
12 beneficiary has one year after receipt thereof to commence the
13 judicial proceeding.

14 (b) Upon the death of the grantor of a trust that was
15 revocable at the grantor's death, the trustee may proceed to
16 distribute the trust property in accordance with the terms of the
17 trust instrument. The trustee is not subject to liability for
18 doing so unless:

19 (1) The trustee knows of a pending judicial proceeding
20 contesting the validity of the trust; or

21 (2) A potential contestant has notified the trustee of a
22 possible judicial proceeding to contest the trust and a judicial

1 proceeding is commenced within sixty days after the contestant sent
2 the notification.

3 (c) A beneficiary of a trust that was revocable at the
4 grantor's death that is determined to have been invalid is liable
5 to return any distribution received.

6 **ARTICLE 7. OFFICE OF THE TRUSTEE.**

7 **§44D-7-701. Accepting or declining trusteeship.**

8 (a) Except as otherwise provided in subsection (c) of this
9 section, a person designated as trustee accepts the trusteeship:

10 (1) By substantially complying with a method of acceptance
11 provided in the terms of the trust instrument; or

12 (2) If the terms of the trust instrument do not provide a
13 method or the method provided in the terms is not expressly made
14 exclusive, by accepting delivery of the trust property, exercising
15 powers or performing duties as trustee, or otherwise indicating
16 acceptance of the trusteeship including by signing a written
17 instrument so stating.

18 (b) A person designated as trustee who has not yet accepted
19 the trusteeship may reject the trusteeship. A person designated as
20 trustee who does not accept the trusteeship within a reasonable
21 time after knowing of the designation is deemed to have rejected
22 the trusteeship.

1 (c) A person designated as trustee, without accepting the
2 trusteeship, may:

3 (1) Act to preserve the trust property if, within a reasonable
4 time after acting, the person sends a rejection of the trusteeship
5 to the grantor or, if the grantor is dead or lacks capacity, to a
6 qualified beneficiary; and

7 (2) Inspect or investigate trust property to determine
8 potential liability under environmental or other law or for any
9 other proper purpose.

10 **§44D-7-702. Trustee's bond.**

11 (a) A trustee shall give bond to secure performance of the
12 trustee's duties only if a bond is required by the terms of the
13 trust instrument or if the court having jurisdiction of the trust
14 finds that a bond is needed to protect the interests of the
15 beneficiaries and the court has not dispensed with the requirement
16 of a bond.

17 (b) The court may specify the amount of a bond, its
18 liabilities and whether sureties are necessary. The court may
19 modify or terminate a bond at any time upon petition by the
20 grantor, if living, a qualified beneficiary, or cotrustee.

21 (c) In accordance with the provisions of section eighteen,
22 article four, chapter thirty-one-a of this code, a regulated

1 financial-service institution authorized to exercise trust powers
2 in this state need not give bond, even if required by the terms of
3 the trust instrument.

4 **§44D-7-703. Cotrustees.**

5 (a) Unless otherwise provided in the terms of the trust
6 instrument, cotrustees who are unable to reach a unanimous decision
7 may act by majority decision. Unless otherwise provided by the
8 trust instrument, when a dispute arises among trustees as to the
9 exercise or nonexercise of any of their powers and there is no
10 agreement by a majority of them, the court in its discretion upon
11 petition filed by any of the trustees, the grantor, if living, a
12 qualified beneficiary, or any interested person, may direct the
13 exercise or nonexercise of the power as it considers necessary for
14 the best interest of the trust.

15 (b) If a vacancy occurs in a cotrusteeship, the remaining
16 cotrustees may act for the trust, unless otherwise provided in the
17 terms of the trust instrument.

18 (c) A cotrustee must participate in the performance of a
19 trustee's function unless the cotrustee is unavailable to perform
20 the function because of absence, illness, disqualification under
21 other law, or other temporary incapacity or the cotrustee has

1 properly delegated the performance of the function to another
2 trustee.

3 (d) If a cotrustee is unavailable to perform duties because of
4 absence, illness, disqualification under other law, or other
5 temporary incapacity, and prompt action is necessary to achieve the
6 purposes of the trust or to avoid injury to the trust property, the
7 remaining cotrustee or a majority of the remaining cotrustees may
8 act for the trust.

9 (e) A trustee may delegate to a cotrustee the performance of
10 a function other than a function that the terms of the trust
11 expressly require to be performed by the trustees jointly. Unless
12 a delegation was irrevocable, a trustee may revoke a delegation of
13 a function previously made.

14 (f) Except as otherwise provided in subsection (g) of this
15 section, a trustee who does not join in an action of another
16 trustee is not liable for the action.

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

18 (1) Prevent a cotrustee from committing a serious breach of
19 trust; and

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

21 (h) A dissenting trustee who joins in an action at the
22 direction of the majority of the trustees and who notifies any

1 cotrustee of the dissent at or before the time of the action is not
2 liable for the action unless the action is a serious breach of
3 trust.

4 **§44D-7-704. Vacancy in trusteeship; appointment of successor.**

5 (a) A vacancy in a trusteeship occurs if:

6 (1) A person designated as trustee rejects the trusteeship;

7 (2) A person designated as trustee cannot be identified or
8 does not exist;

9 (3) A trustee resigns;

10 (4) A trustee is disqualified or removed;

11 (5) A trustee dies; or

12 (6) A guardian or conservator is appointed for an individual
13 serving as trustee.

14 (b) If one or more cotrustees remain in office, a vacancy in
15 a trusteeship need not be filled, unless otherwise provided in the
16 terms of the trust instrument. A vacancy in a trusteeship must be
17 filled if the trust has no remaining trustee.

18 (c) Unless otherwise provided in the terms of the trust
19 instrument, a vacancy in a trusteeship of a noncharitable trust
20 that is required to be filled must be filled in the following order
21 of priority:

1 (1) By a person designated in the terms of the trust
2 instrument to act as successor trustee;

3 (2) By a person appointed by unanimous written agreement of
4 the qualified beneficiaries; or

5 (3) By a person appointed by the court having jurisdiction of
6 the trust.

7 (d) Unless otherwise provided, a vacancy in a trusteeship of
8 a charitable trust that is required to be filled shall be filled in
9 the following order of priority:

10 (1) By a person designated in the terms of the trust to act as
11 successor trustee;

12 (2) By a person selected by the charitable organizations
13 expressly designated to receive distributions under the terms of
14 the trust instrument if the Attorney General of West Virginia
15 either concurs in writing to the selection or fails to make a
16 written objection to the selection within ninety days after
17 receiving by certified or registered mail a notice of the selection
18 by the charitable organizations; or

19 (3) By a person appointed by the court having jurisdiction
20 over the trust.

21 (e) Whether or not a vacancy in a trusteeship exists or is
22 required to be filled, the court may upon petition of the grantor,

1 a qualified beneficiary, or a cotrustee appoint an additional
2 trustee or special fiduciary whenever the court considers the
3 appointment necessary for the administration of the trust.

4 **§44D-7-705. Resignation of trustee.**

5 (a) Unless otherwise provided in the terms of the trust
6 instrument, a trustee may resign without court approval by giving
7 at least thirty days' notice in writing to the grantor, if living,
8 all of the qualified beneficiaries, and all cotrustees, if any.

9 (b) A trustee may resign with the approval of the court having
10 jurisdiction of the trust upon the filing of a petition for such
11 purpose which joins as respondents the grantor, if living, all of
12 the qualified beneficiaries, and all cotrustees, if any. In
13 approving a resignation, the court may issue orders and impose
14 conditions reasonably necessary for the protection of the trust
15 property.

16 (c) Unless otherwise provided by order of the court, any
17 liability of a resigning trustee or of any sureties on the
18 trustee's bond for acts or omissions of the trustee is not
19 discharged or affected by the trustee's resignation.

20 **§44D-7-706. Removal of trustee.**

21 (a) The grantor, a cotrustee or a beneficiary may upon
22 petition request the court to remove a trustee, or a trustee may be

1 removed by the court on its own initiative. In the case of a
2 charitable trust, the Attorney General of West Virginia shall also
3 have standing to petition the court to remove a trustee.

4 (b) The court may remove a trustee if the court finds by a
5 preponderance of the evidence that:

6 (1) The trustee has committed a serious breach of trust;

7 (2) Lack of cooperation among cotrustees substantially impairs
8 the administration of the trust;

9 (3) Because of unfitness, unwillingness or persistent failure
10 of the trustee to administer the trust effectively, removal of the
11 trustee best serves the interests of the beneficiaries; or

12 (4) There has been a substantial change of circumstances or
13 removal is requested by all of the qualified beneficiaries, removal
14 of the trustee best serves the interests of all of the
15 beneficiaries, removal is not inconsistent with a material purpose
16 of the trust, and a suitable cotrustee or successor trustee is
17 available.

18 (c) Pending a final decision on a request to remove a trustee,
19 or in lieu of or in addition to removing a trustee, the court may
20 order appropriate relief under subsection (b) section one thousand
21 one, article ten of this chapter as may be necessary to protect the
22 trust property or the interests of the beneficiaries.

1 **§44D-7-707. Delivery of property by former trustee.**

2 (a) Unless a cotrustee remains in office or the court
3 otherwise orders, and until the trust property is delivered to a
4 successor trustee or other person entitled to it, a trustee who has
5 resigned or been removed has the duties of a trustee and the powers
6 necessary to protect the trust property.

7 (b) A trustee who has resigned or been removed shall proceed
8 expeditiously to deliver the trust property within the trustee's
9 possession to the cotrustee, successor trustee or other person
10 entitled to it.

11 (c) Title to all trust property shall be owned and vested in
12 any successor trustee, upon acceptance of the trusteeship, without
13 any conveyance, transfer or assignment by the prior trustee.

14 **§44D-7-708. Compensation of trustee.**

15 (a) If the terms of the trust instrument do not specify the
16 trustee's compensation, a trustee is entitled to compensation that
17 is reasonable under the circumstances.

18 (b) If the terms of the trust instrument specify the trustee's
19 compensation, the trustee is entitled to be compensated as
20 specified, but the court may upon petition of the grantor,
21 qualified beneficiary, the trustee or cotrustee, if any, may allow
22 more or less compensation if:

1 (1) The duties of the trustee are substantially different from
2 those contemplated when the trust was created; or

3 (2) The compensation specified by the terms of the trust
4 instrument would be unreasonably low or high.

5 **§44D-7-709. Reimbursement of expenses.**

6 (a) A trustee is entitled to be reimbursed out of the trust
7 property, with interest as appropriate, for:

8 (1) Expenses that were properly incurred in the administration
9 of the trust; and

10 (2) To the extent necessary to prevent unjust enrichment of
11 the trust, expenses that were not properly incurred in the
12 administration of the trust.

13 (b) An advance by the trustee of money for the protection of
14 the trust gives rise to a lien against trust property to secure
15 reimbursement with reasonable interest.

16 **ARTICLE 8. DUTIES AND POWERS OF TRUSTEE.**

17 **§44D-8-801. Duty to administer trust.**

18 Upon acceptance of a trusteeship, the trustee shall administer
19 the trust and invest the trust assets in good faith, in accordance
20 with its terms and purposes and the interests of the beneficiaries,
21 and in accordance with this chapter. In administering, managing
22 and investing trust assets, the trustee shall comply with the

1 provisions of the Uniform Prudent Investor Act in article six-c,
2 chapter forty-four of this code, and the Uniform Principal and
3 Income Act in chapter forty-four-b of this code.

4 **§44D-8-802. Duty of loyalty.**

5 (a) A trustee shall administer the trust solely in the
6 interests of the beneficiaries.

7 (b) Subject to the rights of persons dealing with or assisting
8 the trustee as provided in section one thousand twelve, article ten
9 of this chapter, a sale, encumbrance or other transaction involving
10 the investment or management of trust property entered into by the
11 trustee for the trustee's own personal account or which is
12 otherwise affected by a conflict between the trustee's fiduciary
13 and personal interests is voidable by a beneficiary affected by the
14 transaction unless:

15 (1) The transaction was authorized by the terms of the trust
16 instrument;

17 (2) The transaction was approved by the court having
18 jurisdiction over the trust;

19 (3) The beneficiary did not commence a judicial proceeding
20 within the time allowed by section one thousand five, article ten
21 of this chapter;

1 (4) The beneficiary consented to the trustee's conduct,
2 ratified the transaction or released the trustee in compliance with
3 section one thousand nine, article ten of this chapter; or

4 (5) The transaction involves a contract entered into or claim
5 acquired by the trustee before the person became or contemplated
6 becoming trustee.

7 (c) A sale, encumbrance or other transaction involving the
8 investment or management of trust property is presumed to be
9 affected by a conflict between personal and fiduciary interests if
10 it is entered into by the trustee with:

11 (1) The trustee's spouse;

12 (2) The trustee's descendants, siblings, parents or their
13 spouses;

14 (3) An agent or attorney of the trustee; or

15 (4) A corporation or other person or enterprise in which the
16 trustee, or a person that owns a significant interest in the
17 trustee, has an interest that might affect the trustee's best
18 judgment.

19 (d) A transaction between a trustee and a beneficiary that
20 does not concern trust property but that occurs during the
21 existence of the trust or while the trustee retains significant
22 influence over the beneficiary and from which the trustee obtains

1 an advantage beyond the normal commercial advantage from such
2 transaction is voidable by the beneficiary unless the trustee
3 establishes that the transaction was fair to the beneficiary.

4 (e) A transaction not concerning trust property in which the
5 trustee engages in the trustee's individual capacity involves a
6 conflict between personal and fiduciary interests if the
7 transaction concerns an opportunity properly belonging to the
8 trust.

9 (f) An investment by a trustee in securities of an investment
10 company or investment trust, mutual fund or other investment or
11 financial product to which the trustee, or its affiliate, provides
12 services in a capacity other than as trustee is not presumed to be
13 affected by a conflict between personal and fiduciary interests if
14 the investment otherwise complies with the Uniform Prudent Investor
15 Act in article six-c, chapter forty-four of this code. In addition
16 to its compensation for acting as trustee, the trustee may be
17 compensated by the investment company, investment trust, mutual
18 fund or other investment or financial product, or by the affiliated
19 entity sponsoring, selling or providing the service, and the
20 compensation may be in addition to the compensation the trustee is
21 receiving as a trustee if the trustee notifies the persons entitled
22 to receive a copy of the trustee's annual report as provided

1 hereunder of the rate and method by which that compensation was
2 determined and of any subsequent changes to the rate or method of
3 compensation.

4 (g) In voting shares of stock or in exercising powers of
5 control over similar interests in other forms of enterprise, the
6 trustee shall act in the best interests of the beneficiaries. If
7 the trust is the sole owner of a corporation or other form of
8 enterprise, the trustee shall elect or appoint directors or other
9 managers who will manage the corporation or enterprise in the best
10 interests of the beneficiaries.

11 (h) This section does not preclude the following transactions,
12 if fair to the beneficiaries:

13 (1) An agreement between a trustee and a beneficiary relating
14 to the appointment or compensation of the trustee;

15 (2) Payment of reasonable compensation to the trustee;

16 (3) A transaction between a trust and another trust,
17 decedent's estate or conservatorship of which the trustee is a
18 fiduciary or in which a beneficiary has an interest;

19 (4) A deposit of trust money in a regulated financial service
20 institution operated by the trustee; or

21 (5) An advance by the trustee of money for the protection of
22 the trust.

1 (i) The court having jurisdiction over the trust may appoint
2 a special fiduciary to make a decision with respect to any proposed
3 transaction that might violate this section if entered into by the
4 trustee.

5 **§44D-8-803. Impartiality.**

6 If a trust has two or more beneficiaries, the trustee shall
7 act impartially in investing, managing and distributing the trust
8 property, giving due regard to the beneficiaries' respective
9 interests.

10 **§44D-8-804. Prudent administration.**

11 A trustee shall administer the trust as a prudent person
12 would, by considering the purposes, terms, distributional
13 requirements and other circumstances of the trust. In satisfying
14 this standard, the trustee shall exercise reasonable care, skill
15 and caution.

16 **§44D-8-805. Costs of administration.**

17 In administering a trust, the trustee may incur only costs
18 that are reasonable in relation to the trust property, the purposes
19 of the trust and the skills of the trustee.

20 **§44D-8-806. Trustee's skills.**

21 A trustee who has special skills or expertise, or is named
22 trustee in reliance upon the trustee's representation that the

1 trustee has special skills or expertise, shall use those special
2 skills or expertise.

3 **§44D-8-807. Delegation by trustee.**

4 (a) A trustee may delegate duties and powers that a prudent
5 trustee of comparable skills could properly delegate under the
6 circumstances. The trustee shall exercise reasonable care, skill,
7 and caution in:

8 (1) Selecting an agent;

9 (2) Establishing the scope and terms of the delegation,
10 consistent with the purposes and terms of the trust instrument; and

11 (3) Periodically reviewing the agent's actions in order to
12 monitor the agent's performance and compliance with the terms of
13 the delegation.

14 (b) In performing a delegated function, an agent owes a duty
15 to the trust to exercise reasonable care to comply with the terms
16 of the delegation.

17 (c) A trustee who complies with subsection (a) of this section
18 is not liable to the beneficiaries or to the trust for an action of
19 the agent to whom the function was delegated.

20 (d) By accepting a delegation of powers or duties from the
21 trustee of a trust that is subject to the law of this state, an
22 agent submits to the jurisdiction of the courts of this state.

1 (e) The delegating trustee is not responsible for the
2 decisions, actions or inactions of the trustee to whom those duties
3 and powers have been delegated if the delegating trustee has
4 exercised reasonable care, skill and caution in establishing the
5 scope and specific terms of the delegation and in reviewing
6 periodically the performance of the trustee to whom the duties and
7 powers have been delegated and the trustee's compliance with the
8 scope and specific terms of the delegation.

9 **§44D-8-808. Powers to direct.**

10 (a) While a trust is revocable, the trustee may follow a
11 direction of the grantor that is contrary to the terms of the trust
12 instrument.

13 (b) If the terms of a trust instrument confer upon a person
14 other than the grantor of a revocable trust power to direct certain
15 actions of the trustee, the trustee shall act in accordance with an
16 exercise of the power unless the attempted exercise is manifestly
17 contrary to the terms of the trust instrument or the trustee knows
18 the attempted exercise would constitute a serious breach of a
19 fiduciary duty that the person holding the power owes to the
20 beneficiaries of the trust.

1 (c) The terms of a trust instrument may confer upon a trustee
2 or other person a power to direct the modification or termination
3 of the trust.

4 (d) A person, other than a beneficiary, who holds a power to
5 direct is presumptively a fiduciary who, as such, is required to
6 act in good faith with regard to the purposes of the trust and the
7 interests of the beneficiaries. The holder of a power to direct is
8 liable for any loss that results from the holder's breach of a
9 fiduciary duty.

10 **§44D-8-809. Control and protection of trust property.**

11 A trustee shall take reasonable steps to take control of and
12 protect the trust property.

13 **§44D-8-810. Recordkeeping and identification of trust property.**

14 (a) A trustee shall keep adequate records of the
15 administration of the trust.

16 (b) A trustee shall keep trust property separate from the
17 trustee's own property.

18 (c) Except as otherwise provided in subsection (d) of this
19 section, a trustee shall cause the trust property to be designated
20 so that the interest of the trust, to the extent feasible, appears
21 in records maintained by a party other than a trustee or
22 beneficiary.

1 (d) If the trustee maintains records clearly indicating the
2 respective interests, a trustee may invest as a whole the property
3 of two or more separate trusts.

4 **§44D-8-811. Enforcement and defense of claims.**

5 A trustee shall take reasonable steps to enforce claims of the
6 trust and to defend claims against the trust.

7 **§44D-8-812. Collecting trust property.**

8 A trustee shall take reasonable steps to compel a former
9 trustee or other person to deliver trust property to the trustee,
10 and to redress a breach of trust known to the trustee to have been
11 committed by a former trustee.

12 **§44D-8-813. Duty to inform and report.**

13 (a) A trustee shall keep the current beneficiaries of the
14 trust reasonably informed about the administration of the trust and
15 of the material facts necessary for them to protect their
16 interests. Unless unreasonable under the circumstances, a trustee
17 shall within a reasonable time respond to a beneficiary's request
18 for information related to the administration of the trust.

19 (b) A trustee:

20 (1) Upon request of a beneficiary, shall within a reasonable
21 time furnish to the beneficiary a copy of the trust instrument;

1 (2) Within sixty days after accepting a trusteeship, shall
2 notify the qualified beneficiaries of the acceptance and of the
3 trustee's name, address and telephone number;

4 (3) Within sixty days after the date the trustee acquires
5 knowledge of the creation of an irrevocable trust, or the date the
6 trustee acquires knowledge that a formerly revocable trust has
7 become irrevocable, whether by the death of the grantor or
8 otherwise, shall notify the qualified beneficiaries of the trust's
9 existence, of the identity of the grantor or grantors, of the right
10 to request a copy of the trust instrument, and of the right to a
11 trustee's report as provided in subsection (c) of this section; and

12 (4) Shall notify the qualified beneficiaries within a
13 reasonable time in advance of any change in the method or rate of
14 the trustee's compensation.

15 (c) A trustee shall send to the distributees or permissible
16 distributees of trust income or principal, and to other qualified
17 or nonqualified beneficiaries who request it, at least annually and
18 at the termination of the trust, a report of the trust property,
19 liabilities, receipts, and disbursements, including the source and
20 amount of the trustee's compensation, a listing of the trust assets
21 and, if feasible, their respective market values. Upon a vacancy
22 in a trusteeship, unless a cotrustee remains in office, a report

1 shall be sent to the qualified beneficiaries by the former trustee.
2 A personal representative, conservator or guardian is responsible
3 for sending the qualified beneficiaries a report on behalf of a
4 deceased or incapacitated trustee.

5 (d) A beneficiary may waive the right to a trustee's report or
6 other information otherwise required to be furnished under this
7 section. A beneficiary, with respect to future reports and other
8 information, may withdraw a waiver previously given.

9 (e) Subdivisions (2) and (3), subsection (b) of this section
10 do not apply to a trustee who accepts a trusteeship before the
11 effective date of this chapter, to an irrevocable trust created
12 before the effective date of this chapter, or to a revocable trust
13 that becomes irrevocable before the effective date of this chapter.

14 **§44D-8-814. Discretionary powers; tax savings.**

15 (a) Notwithstanding the breadth of discretion granted to a
16 trustee in the terms of the trust instrument, including the use of
17 such terms as "absolute," "sole" or "uncontrolled," the trustee
18 shall exercise a discretionary power in good faith and in
19 accordance with the general and specific terms and purposes of the
20 trust and the interests of the beneficiaries.

1 (b) Subject to subsection (d) of this section, and unless the
2 terms of the trust instrument expressly indicate that a rule in
3 this subsection does not apply:

4 (1) A person other than a grantor who is a beneficiary and
5 trustee of a trust that confers on the trustee a power to make
6 discretionary distributions to or for the trustee's personal
7 benefit may exercise the power only in accordance with an
8 ascertainable standard; and

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

12 (c) A power whose exercise is limited or prohibited by
13 subsection (b) of this section may be exercised by a majority of
14 the remaining trustees whose exercise of the power is not so
15 limited or prohibited. If the power of all trustees is so limited
16 or prohibited, the court having jurisdiction may appoint a special
17 fiduciary with authority to exercise the power.

18 (d) Subsection (b) of this section does not apply to:

19 (1) A power held by the grantor's spouse who is the trustee of
20 a trust for which a marital deduction, as defined in Section
21 2056(b) (5) or Section 2523(e) of the Internal Revenue Code;

1 (2) Any trust during any period that the trust may be revoked
2 or amended by its grantor; or

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

6 **§44D-8-815. General powers of trustee.**

7 (a) A trustee, without authorization by the court having
8 jurisdiction, may exercise:

9 (1) Powers conferred by the terms of the trust instrument; or

10 (2) Except as limited by the terms of the trust instrument:

11 (A) All powers over the trust property which an unmarried
12 competent owner has over individually owned property;

13 (B) Any other powers appropriate to achieve the proper
14 investment, management and distribution of the trust property; and

15 (C) Any other powers conferred by this code.

16 (b) The exercise of a power is subject to the fiduciary duties
17 prescribed by this article.

18 **§44D-8-816. Specific powers of trustee.**

19 Without limiting the authority conferred by section eight
20 hundred fifteen of this article, a trustee has the powers
21 enumerated in the provisions of section three, article five-a,
22 chapter forty-four of this code.

1 **§44D-8-817. Distribution upon termination.**

2 (a) Upon termination or partial termination of a trust, the
3 trustee may send to the beneficiaries a proposal for distribution.
4 The right of any beneficiary to object to the proposed distribution
5 terminates if the beneficiary does not notify the trustee of an
6 objection within sixty days after the proposal was sent but only if
7 the proposal informed the beneficiary of the right to object and of
8 the time allowed for objection.

9 (b) Upon the occurrence of an event terminating or partially
10 terminating a trust, the trustee shall proceed expeditiously to
11 distribute the trust property to the persons entitled to it,
12 subject to the right of the trustee to retain a reasonable reserve
13 for the payment of debts, expenses and taxes.

14 (c) A release by a beneficiary of a trustee from liability for
15 breach of trust is invalid to the extent:

16 (1) It was induced by improper conduct of the trustee; or

17 (2) The beneficiary, at the time of the release, did not know
18 of the beneficiary's rights or of the material facts relating to
19 the breach.

20 **ARTICLE 9. UNIFORM PRUDENT INVESTOR ACT.**

21 **§44D-9-901. Uniform Prudent Investor Act.**

1 The Uniform Prudent Investor Act is contained in article
2 six-c, chapter forty-four of this code.

3 **ARTICLE 10. LIABILITY OF TRUSTEES AND RIGHTS OF PERSONS DEALING**
4 **WITH TRUSTEE.**

5 **§44D-10-1001. Remedies for breach of trust.**

6 (a) A violation by a trustee of a duty the trustee owes to a
7 beneficiary is a breach of trust.

8 (b) To remedy a breach of trust that has occurred or may
9 occur, the court may:

10 (1) Compel the trustee to perform the trustee's duties;

11 (2) Enjoin the trustee from committing a breach of trust;

12 (3) Compel the trustee to redress a breach of trust by paying
13 money, restoring property or other means;

14 (4) Order a trustee to account;

15 (5) Appoint a special fiduciary to take possession of the
16 trust property and administer the trust in accordance with the
17 limitations and directions as ordered by the court;

18 (6) Suspend the trustee;

19 (7) Remove the trustee as provided in section seven hundred
20 six, article seven of this chapter;

21 (8) Reduce or deny compensation to the trustee;

1 (9) Subject to section one thousand twelve of this article,
2 void an act of the trustee, impose a lien or a constructive trust
3 on trust property or trace trust property wrongfully disposed of
4 and recover the property or its proceeds; or

5 (10) Order any other appropriate relief.

6 **§44D-10-1002. Damages for breach of trust.**

7 (a) A trustee who commits a breach of trust is liable to the
8 beneficiaries affected for the greater of:

9 (1) The amount required to restore the value of the trust
10 property and trust distributions to what they would have been had
11 the breach not occurred; or

12 (2) The profit the trustee made by reason of the breach.

13 (b) Except as otherwise provided in this subsection, if more
14 than one trustee is liable to the beneficiaries for a breach of
15 trust, a trustee is entitled to contribution from the other trustee
16 or trustees. A trustee is not entitled to contribution if the
17 trustee was substantially more at fault than another trustee or if
18 the trustee committed the breach of trust in bad faith or with
19 reckless indifference to the purposes of the trust or the interests
20 of the beneficiaries. A trustee who received a benefit from the
21 breach of trust is not entitled to contribution from another
22 trustee to the extent of the benefit received.

1 **§44D-10-1003. Damages in absence of breach.**

2 Absent a breach of trust, a trustee is not liable to a
3 beneficiary for a loss or depreciation in the value of trust
4 property or for not having made a profit.

5 **§44D-10-1004. Attorney's fees and costs.**

6 In a judicial proceeding involving the administration of a
7 trust, the court, as justice and equity may require, may award
8 costs and expenses, including reasonable attorney's fees, to any
9 party, to be paid by another party or from the trust that is the
10 subject of the controversy.

11 **§44D-10-1005. Limitation of action against trustee.**

12 (a) A beneficiary may not commence a proceeding against a
13 trustee for breach of trust more than one year after the date the
14 beneficiary or a representative of the beneficiary was sent a
15 report that adequately disclosed the existence of a potential claim
16 for breach of trust and informed the beneficiary of the time
17 allowed for commencing a proceeding.

18 (b) A report adequately discloses the existence of a potential
19 claim for breach of trust if it provides sufficient information so
20 that the beneficiary or representative of the beneficiary knows of
21 the potential claim or should know of the existence of the
22 potential claim.

1 (c) If subsection (a) of this section does not apply, a
2 judicial proceeding by a beneficiary against a trustee for breach
3 of trust must be commenced within five years after the first to
4 occur of:

5 (1) The removal, resignation or death of the trustee;

6 (2) The termination of the beneficiary's interest in the
7 trust;

8 (3) The termination of the trust; or

9 (4) The time when the beneficiary knew or should have known of
10 the breach of trust.

11 **§44D-10-1006. Reliance on trust instrument.**

12 A trustee who acts in reasonable reliance on the terms of the
13 trust instrument as expressed in the trust instrument is not liable
14 to a beneficiary for a breach of trust to the extent the breach
15 resulted from the reliance.

16 **§44D-10-1007. Event affecting administration or distribution.**

17 If the happening of an event, including, but not limited to,
18 marriage, divorce, performance of educational requirements,
19 attaining a specific age or death, affects the administration or
20 distribution of a trust, a trustee who has exercised reasonable
21 care to ascertain the happening of the event is not liable for a
22 loss resulting from the trustee's lack of knowledge.

1 **§44D-10-1008. Exculpation of trustee.**

2 (a) A term of a trust instrument relieving a trustee of
3 liability for breach of trust is unenforceable to the extent that
4 it:

5 (1) Relieves the trustee of liability for breach of trust
6 committed in bad faith or with reckless indifference to the
7 purposes of the trust or the interests of the beneficiaries; or

8 (2) Was inserted as the result of an abuse by the trustee of
9 a fiduciary or confidential relationship to the grantor.

10 (b) An exculpatory term drafted or caused to be drafted by the
11 trustee is invalid as an abuse of a fiduciary or confidential
12 relationship unless:

13 (1) The trustee proves that the exculpatory term is fair under
14 the circumstances and that its existence and contents were
15 adequately communicated to the grantor; or

16 (2) The grantor was represented by an attorney not employed by
17 the trustee with respect to the trust and the attorney provided
18 independent legal advice.

19 **§44D-10-1009. Beneficiary's consent, release or ratification.**

20 (a) A trustee is not liable to a beneficiary for breach of
21 trust if the beneficiary, while having capacity, consented to the

1 conduct constituting the breach, released the trustee from
2 liability for the breach, or ratified the transaction constituting
3 the breach, unless:

4 (1) The consent, release or ratification of the beneficiary
5 was induced by improper conduct of the trustee; or

6 (2) At the time of the consent, release or ratification, the
7 beneficiary did not know of the beneficiary's rights or of the
8 material facts relating to the breach.

9 (b) A beneficiary is also bound to the extent an approval is
10 given by a person authorized to represent the beneficiary as
11 provided in article three of this chapter.

12 **§44D-10-1010. Limitation on personal liability of trustee.**

13 (a) Except as otherwise provided in the contract, a trustee is
14 not personally liable on a contract properly entered into in the
15 trustee's fiduciary capacity in the course of administering the
16 trust if the trustee in the contract disclosed the fiduciary
17 capacity.

18 (b) A trustee is personally liable for torts committed in the
19 course of administering a trust, or for obligations arising from
20 ownership or control of trust property, including liability for
21 violation of environmental law, only if the trustee is personally
22 at fault.

1 (c) A claim based on a contract entered into by a trustee in
2 the trustee's fiduciary capacity, on an obligation arising from
3 ownership or control of trust property, or on a tort committed in
4 the course of administering a trust, may be asserted in a judicial
5 proceeding against the trustee in the trustee's fiduciary capacity,
6 whether or not the trustee is personally liable for the claim.

7 **§44D-10-1011. Interest as general partner.**

8 (a) Except as otherwise provided in subsection (c) of this
9 section or unless personal liability is imposed in the contract, a
10 trustee who holds an interest as a general partner in a general or
11 limited partnership is not personally liable on a contract entered
12 into by the partnership after the trust's acquisition of the
13 interest if the fiduciary capacity was disclosed in the contract.
14 The requirement of disclosure in the contract is satisfied if the
15 trustee signs the contract, or signs another writing which is
16 contemporaneously delivered to the other parties to the contract,
17 in a manner that clearly evidences that the trustee executed the
18 contract in a fiduciary capacity.

19 (b) Except as otherwise provided in subsection (c) of this
20 section, a trustee who holds an interest as a general partner is
21 not personally liable for torts committed by the partnership or for

1 obligations arising from ownership or control of the interest
2 unless the trustee is personally at fault.

3 (c) The immunity provided by this section does not apply if an
4 interest in the partnership is held by the trustee in a capacity
5 other than that of trustee or is held by the trustee's spouse or
6 one or more of the trustee's descendants, siblings or parents or
7 the spouse of any of them.

8 (d) If the trustee of a revocable trust holds an interest as
9 a general partner, the grantor is personally liable for contracts
10 and other obligations of the partnership as if the grantor were a
11 general partner.

12 **§44D-10-1012. Protection of person dealing with trustee.**

13 (a) A person other than a beneficiary who in good faith
14 assists a trustee, or who in good faith and for value deals with a
15 trustee, without knowledge that the trustee is exceeding or
16 improperly exercising the trustee's powers is protected from
17 liability as if the trustee properly exercised the power.

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

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

1 (d) A person other than a beneficiary who in good faith
2 assists a former trustee, or who in good faith and for value deals
3 with a former trustee, without knowledge that the trusteeship has
4 terminated is protected from liability as if the former trustee
5 were still a trustee.

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

9 **§44D-10-1013. Certification of trust.**

10 (a) Instead of furnishing a copy of the trust instrument to a
11 person other than a beneficiary, the trustee may furnish to the
12 person a certification of trust containing the following
13 information:

14 (1) That the trust exists and the date the trust instrument
15 was executed;

16 (2) The identity of the grantor;

17 (3) The identity and address of the currently acting trustee;

18 (4) The powers of the trustee;

19 (5) The revocability or irrevocability of the trust and the
20 identity of any person holding a power to revoke the trust;

1 (6) The authority of cotrustees to sign or otherwise
2 authenticate and whether all or less than all are required in order
3 to exercise powers of the trustee;

4 (7) The trust's taxpayer identification number; and

5 (8) The manner of taking title to trust property.

6 (b) A certification of trust may be signed or otherwise
7 authenticated by any trustee.

8 (c) A certification of trust must state that the trust has not
9 been revoked, modified or amended in any manner that would cause
10 the representations contained in the certification of trust to be
11 incorrect.

12 (d) A certification of trust need not contain the dispositive
13 terms of a trust.

14 (e) A recipient of a certification of trust may require the
15 trustee to furnish copies of those excerpts from the original trust
16 instrument and later amendments which designate the trustee and
17 confer upon the trustee the power to act in the pending
18 transaction.

19 (f) A person who acts in reliance upon a certification of
20 trust without knowledge that the representations contained in the
21 certification are incorrect is not liable to any person for so
22 acting and may assume without inquiry the existence of the facts

1 contained in the certification. Knowledge of the terms of the
2 trust instrument may not be inferred solely from the fact that a
3 copy of all or part of the trust instrument is held by the person
4 relying upon the certification.

5 (g) A person who in good faith enters into a transaction in
6 reliance upon a certification of trust may enforce the transaction
7 against the trust property as if the representations contained in
8 the certification were correct.

9 (h) A person making a demand for the trust instrument in
10 addition to a certification of trust or excerpts is liable for
11 damages if the court having jurisdiction over the trust determines
12 that the person did not act in good faith in demanding the trust
13 instrument.

14 (i) This section does not limit the right of a person to
15 obtain a copy of the trust instrument in a judicial proceeding
16 concerning the trust.

17 (j) Nothing in this section expands, limits or otherwise
18 affects the provisions contained in section four-a, article one,
19 chapter thirty-six of this code pertaining to memoranda of trust.

20 **ARTICLE 11. MISCELLANEOUS PROVISIONS.**

21 **§44D-11-1101. Uniformity of application and construction.**

1 In applying and construing this chapter, consideration shall
2 be given to the need to promote uniformity of the law with respect
3 to its subject matter among states that enact it.

4 **§44D-11-1102. Electronic records and signatures.**

5 The provisions of this chapter governing the legal effect,
6 validity or enforceability of electronic records or electronic
7 signatures, and of contracts formed or performed with the use of
8 the records or signatures, conform to the requirements of Section
9 102 of the Electronic Signatures in Global and National Commerce
10 Act (15 U.S.C. § 7002) and supersede, modify, and limit the
11 requirements of the Electronic Signatures in Global and National
12 Commerce Act.

13 **§44D-11-1103. Severability clause.**

14 If any provision of this chapter or its application to any
15 person or circumstances is held invalid, the invalidity does not
16 affect other provisions or applications of this chapter which can
17 be given effect without the invalid provision or application, and
18 to this end the provisions of this chapter are severable.

19 **§44D-11-1104. Effective date.**

20 This chapter takes effect on July 1, 2011.

21 **§44D-11-1105. Application to existing relationships.**

22 (a) Except as otherwise provided in this chapter:

1 (1) This chapter applies to all trusts created before, on, or
2 after July 1, 2011;

3 (2) This chapter applies to all judicial proceedings
4 concerning trusts commenced on or after July 1, 2011;

5 (3) This chapter applies to judicial proceedings concerning
6 trusts commenced before July 1, 2011, unless the court finds that
7 application of a particular provision of this chapter would
8 substantially interfere with the effective conduct of the judicial
9 proceedings or prejudice the rights of the parties, in which case
10 the particular provision of this chapter does not apply and the
11 superseded law applies;

12 (4) Any rule of construction or presumption provided in this
13 chapter applies to trust instruments executed before July 1, 2011,
14 unless there is a clear indication of a contrary intent in the
15 terms of the trust instrument; and

16 (5) An act done before July 1, 2011 is not affected by this
17 chapter.

18 (b) If a right is acquired or vested before July 1, 2011, or
19 if a right is extinguished or barred upon the expiration of a
20 prescribed period that has commenced to run under any other statute
21 before July 1, 2011, that right or statute continues to apply even
22 if the statute has been repealed or superseded.

NOTE: The bill was recommended for introduction and passage by the Commission on Interstate Cooperation.

The purpose of this bill is to make comprehensive revision to the state's trust laws by substantially enacting the Uniform Trust Code and integrating it into the existing statutes in West Virginia which deal with trusts. The Uniform Trust Code was adopted by the National Conference of Commissioners on Uniform State Laws and approved by the American Bar Association, the ABA Real Property, Probate and Trust Law Section, and the AARP and provides a comprehensive model for codifying the law of trusts. The original language of the Uniform Trust Code has been modified where necessary to conform to existing West Virginia practices and procedures. In order to eliminate confusion, clarifications have also been made where necessary to existing statutory provisions governing personal representatives of estates, who are also fiduciaries like trustees, and provisions governing trustees of real estate deeds of trust. The Uniform Trust Code would apply beginning July 1, 2011.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.