

1 HB394  
2 149428-4  
3 By Representative England  
4 RFD: Financial Services  
5 First Read: 07-MAR-13

1  
2 ENROLLED, An Act,

3 Relating to trusts; to amend Sections 19-3A-102,  
4 19-3A-103, 19-3A-104, and 19-3A-409 of the Code of Alabama  
5 1975, relating to the Alabama Principal and Income Act, to  
6 make such provisions consistent with new federal law  
7 authorizing unitrusts; and to add Sections 19-3A-105,  
8 19-3A-106, and 19-3A-608 to the Code of Alabama 1975, to  
9 address trusts created as express unitrusts, to authorize the  
10 conversion of trusts to unitrusts and to clarify that the  
11 Alabama Trust Code applies to the Alabama Principal and Income  
12 Act.

13 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

14 Section 1. Sections 19-3A-102, 19-3A-103, 19-3A-104,  
15 and 19-3A-409 of the Code of Alabama 1975, are amended to read  
16 as follows:

17 "§19-3A-102.

18 "As used in this chapter, the following terms are  
19 defined as follows:

20 "(1) ACCOUNTING PERIOD. A calendar year unless  
21 another 12-month period is selected by a fiduciary. The term  
22 includes a portion of a calendar year or other 12-month period  
23 that begins when an income interest begins or ends when an  
24 income interest ends.

1           "(2) BENEFICIARY. Includes, in the case of a  
2 decedent's estate, an heir, legatee, and devisee and, in the  
3 case of a trust, an income beneficiary and a remainder  
4 beneficiary.

5           "(3) FIDUCIARY. A personal representative or a  
6 trustee. The term includes an executor, administrator,  
7 successor personal representative, special administrator, and  
8 a person performing substantially the same function.

9           "(4) INCOME. Money or property that a fiduciary  
10 receives as current return from a principal asset. The term  
11 also includes a portion of receipts from a sale, exchange, or  
12 liquidation of a principal asset, to the extent provided in  
13 Article 4.

14           "(5) INCOME BENEFICIARY. A person to whom net income  
15 of a trust is or may be payable.

16           "(6) INCOME INTEREST. The right of an income  
17 beneficiary to receive all or part of net income, whether the  
18 terms of the trust require it to be distributed or authorize  
19 it to be distributed in the trustee's discretion.

20           "(7) INVENTORY VALUE. a. The cost of an asset that  
21 is purchased by the fiduciary, or b. the market value of an  
22 asset at the time the asset becomes subject to the trust;  
23 except that in the case of a testamentary trust, the fiduciary  
24 may use any value finally determined for the purposes of an  
25 estate or inheritance tax.

1           "(8) MANDATORY INCOME INTEREST. The right of an  
2 income beneficiary to receive net income that the terms of the  
3 trust require the fiduciary to distribute.

4           "(9) NET INCOME. The total receipts allocated to  
5 income during an accounting period minus the disbursements  
6 made from income during the period, plus or minus transfers  
7 under this chapter to or from income during the period.

8           "(10) PERSON. An individual, corporation, business  
9 trust, estate, trust, partnership, limited liability company,  
10 association, joint venture, government, governmental  
11 subdivision, agency, or instrumentality, public corporation,  
12 or any other legal or commercial entity.

13           "(11) PRESUMPTIVE REMAINDER BENEFICIARY. Those  
14 persons who would be entitled to the principal of a trust if  
15 the income interest were immediately terminated, and if a  
16 trust contains a power of appointment, the holder of such  
17 power of appointment shall also be a presumptive remainder  
18 beneficiary.

19           "(12) PRINCIPAL. Property transferred to or acquired  
20 by a fiduciary and held in trust for distribution to a  
21 remainder beneficiary when an income interest ends.

22           "(13) REMAINDER BENEFICIARY. A person entitled to  
23 receive principal when an income interest ends.

24           "(14) TERMS OF A TRUST. The manifestation of the  
25 intent of a settlor or decedent with respect to the trust,

1 expressed in a manner that admits of its proof in a judicial  
2 proceeding, whether by written or spoken words or by conduct.

3 "(15) TRUSTEE. An original, additional, or successor  
4 trustee, whether or not appointed or confirmed by a court.

5 "(16) UNITRUST AMOUNT. An amount determined annually  
6 equal to a percentage (specified by the provisions of the  
7 governing instrument, the written notice referenced in  
8 subsection 19-3A-106(a), the written instrument referenced in  
9 subsection 19-3A-106(b), or the order of the court referenced  
10 in subsection 19-3A-106(c), whichever is applicable) of the  
11 net fair market value of the trust assets, whether determined  
12 annually or averaged over a designated multiple year smoothing  
13 period.

14 "§19-3A-103.

15 "(a) In allocating receipts and disbursements to or  
16 between principal and income, and with respect to any matter  
17 within the scope of Article 2 and Article 3, a fiduciary:

18 "(1) Shall administer a trust or decedent's estate  
19 in accordance with the terms of the trust or the will, even if  
20 there is a different provision in this chapter;

21 "(2) May administer a trust or decedent's estate by  
22 the exercise of a discretionary power of administration given  
23 to the fiduciary by the terms of the trust or the will, even  
24 if the exercise of the power produces a result different from  
25 a result required or permitted by this chapter;

1           "(3) Subject to the provisions of Section 19-3A-104,  
2 shall administer a trust or decedent's estate in accordance  
3 with this chapter if the terms of the trust or the will do not  
4 contain a different provision or do not give the fiduciary a  
5 discretionary power of administration; and

6           "(4) Shall add a receipt or charge a disbursement to  
7 principal to the extent that the terms of the trust and this  
8 chapter do not provide a rule for allocating the receipt or  
9 disbursement to or between principal and income.

10           "(b) In exercising the power to adjust under Section  
11 19-3A-104(a) or the power to convert to a unitrust under  
12 Section 19-3A-106, if applicable, or a discretionary power of  
13 administration regarding a matter within the scope of this  
14 chapter, whether granted by the terms of a trust, a will, or  
15 this chapter, a fiduciary shall administer a trust or  
16 decedent's estate impartially, based on what is fair and  
17 reasonable to all of the beneficiaries, except to the extent  
18 that the terms of the trust or the will clearly manifest an  
19 intention that the fiduciary shall or may favor one or more of  
20 the beneficiaries. The exercise of discretion in accordance  
21 with this chapter is presumed to be fair and reasonable to all  
22 of the beneficiaries.

23           "§19-3A-104.

24           "(a) If the terms of the trust expressly provide by  
25 specific reference to this section, then a trustee may have

1 the power to adjust between principal and income to the extent  
 2 the trustee considers necessary if (1) the trustee invests and  
 3 manages trust assets as a prudent investor; (2) the terms of  
 4 the trust describe the amount that may or must be distributed  
 5 to a beneficiary by referring to the trust's income, and (3)  
 6 the trustee determines, after applying the rules in Section  
 7 19-3A-103(a), that the trustee is unable to comply with  
 8 Section 19-3A-103(b).

9 "(b) In deciding whether and to what extent to  
 10 exercise the power conferred by subsection (a), a trustee  
 11 shall consider all factors relevant to the trust and its  
 12 beneficiaries, including, but not limited to:

13 "(1) The nature, purpose, and expected duration of  
 14 the trust;

15 "(2) The intent of the settlor;

16 "(3) The identity and circumstances of the  
 17 beneficiaries;

18 "(4) The needs for liquidity for the trust;

19 "(5) The regularity of income to the trust;

20 "(6) The need for preservation and appreciation of  
 21 capital;

22 "(7) The nature of the assets held in the trust and  
 23 the extent to which they consist of financial assets,  
 24 interests in closely held enterprises, tangible and intangible  
 25 personal property, or real property;

1           "(8) The extent to which an asset is used by a  
2 beneficiary;

3           "(9) Whether an asset was purchased by the trustee  
4 or received from the settlor;

5           "(10) The net amount allocated to income under the  
6 other sections of this chapter and the increase or decrease in  
7 the value of the principal assets, which the trustee may  
8 estimate as to assets for which market values are not readily  
9 available;

10           "(11) Whether and to what extent the terms of the  
11 trust a. give the trustee the power to invade principal or  
12 accumulate income, or b. prohibit the trustee from invading  
13 principal or accumulating income;

14           "(12) The extent to which the trustee has exercised  
15 a power from time to time to invade principal or accumulate  
16 income;

17           "(13) The actual and anticipated effect of economic  
18 conditions, inflation, and deflation upon principal and  
19 income; and

20           "(14) The anticipated income and transfer tax  
21 consequences of an adjustment.

22           "(c) Notwithstanding the power conferred by  
23 subsection (a), a trustee may not make an adjustment:

24           "(1) That diminishes the income interest in a trust  
25 that requires all of the income to be paid at least annually



1 to a spouse and for which an estate tax or gift tax marital  
 2 deduction would be allowed, in whole or in part, if the  
 3 trustee did not have the power to make the adjustment;

4 "(2) That reduces the actuarial value of the income  
 5 interest in a trust to which a person transfers property with  
 6 the intent to qualify the transfer for a gift tax exclusion;

7 "(3) That changes the amount payable to a  
 8 beneficiary as a fixed annuity or a fixed fraction of the  
 9 value of the trust assets;

10 "(4) That changes the amount that is permanently set  
 11 aside for charitable purposes under a will or the terms of a  
 12 trust, unless both income and principal are so set aside;

13 "(5) If possessing or exercising the power to make  
 14 an adjustment causes an individual to be treated as the owner  
 15 of all or part of the trust for income tax purposes, and the  
 16 individual would not be treated as the owner if the trustee  
 17 did not possess the power to make an adjustment;

18 "(6) If possessing or exercising the power to make  
 19 an adjustment causes all or part of the trust assets to be  
 20 included for estate tax purposes in the estate of an  
 21 individual who has the power to remove a trustee or appoint a  
 22 trustee, or both, and the assets would not be included in the  
 23 estate of the individual if the trustee did not possess the  
 24 power to make an adjustment;

1           "(7) If the trustee is not a beneficiary, but the  
2 adjustment would benefit the trustee directly or indirectly;  
3 ~~or~~

4           "(8) If the trustee is a beneficiary of the trust;  
5 or

6           "(9) If the trust is an express unitrust under  
7 Section 19-3A-105 (relating to express unitrusts) or is a  
8 unitrust by reason of a conversion under Section 19-3A-106  
9 (relating to power to convert to unitrust).

10           "(d) If subsection (c) (5), subsection (c) (6),  
11 subsection (c) (7), or subsection (c) (8) applies to a trustee  
12 and there is more than one trustee, then the co-trustee to  
13 whom the provision does not apply may make the adjustment,  
14 unless the exercise of the power by the remaining trustee or  
15 trustees is not permitted by the terms of the trust.

16           "(e) A trustee may release the entire power  
17 conferred by subsection (a) or may release only the power to  
18 adjust from income to principal or the power to adjust from  
19 principal to income if the trustee is uncertain about whether  
20 possessing or exercising the power will cause a result  
21 described in subsection (c) (1) through subsection (c) (7) or if  
22 the trustee determines that possessing or exercising the power  
23 will or may deprive the trust of a tax benefit or impose a tax  
24 burden not described in subsection (c). The release may be

1 permanent or for a specified period, including a period  
2 measured by the life of an individual.

3 "(f) The trustee or any beneficiary of a trust  
4 covered by this chapter (or a trust to be created from a  
5 decedent's estate that is covered by this chapter) (1) may  
6 seek approval from a court of competent jurisdiction to be  
7 governed prospectively by this section, or (2) may at any time  
8 affirmatively elect to be governed prospectively by this  
9 section by obtaining the written consent of all of the current  
10 income beneficiaries and the presumptive remainder  
11 beneficiaries of the trust, and such written consent shall  
12 conclusively bind all persons who may have any interest in the  
13 affected trust, including all contingent remainder  
14 beneficiaries and potential appointees of the trust.

15 "§19-3A-409.

16 "(a) In this section:

17 "(1) "Payment" means a payment that a fiduciary may  
18 receive over a fixed number of years or during the life of one  
19 or more individuals because of services rendered or property  
20 transferred to the payer in exchange for future payments. The  
21 term includes a payment made in money or property from the  
22 payer's general assets or from a separate fund created by the  
23 payer. For purposes of subsections (d), (e), (f), and (g), the  
24 term also includes any payment from any separate fund,  
25 regardless of the reason for the payment.

1           "(2) "Separate fund" includes a private or  
2 commercial annuity, an individual retirement account, and a  
3 pension, profit-sharing, stock-bonus, or stock-ownership plan.

4           "(b) To the extent that a payment or portion thereof  
5 is characterized by other sections of this chapter as income  
6 in the hands of the payer, a fiduciary shall allocate such  
7 payment or portion thereof to income. The fiduciary shall  
8 allocate to principal the balance of the payment and any other  
9 payment received in the same accounting period that is not  
10 characterized as income to the payer by other sections of this  
11 chapter.

12           "(c) To the extent that a payment is not allocated  
13 between income and principal pursuant to subsection (b), a  
14 fiduciary shall allocate to income ten percent (10%) of the  
15 part that is required to be made during the accounting period  
16 and the balance to principal. If no part of a payment is  
17 required to be made or if the payment received by the  
18 fiduciary is the entire amount to which the fiduciary is  
19 entitled, then the fiduciary shall allocate the entire payment  
20 to principal. For purposes of this subsection, a payment is  
21 not "required to be made" to the extent that it is made  
22 because the fiduciary exercises a right of withdrawal.

23           "(d) Except as otherwise provided in subsection (e),  
24 subsections (f) and (g) apply and subsections (b) and (c) do

1 not apply in determining the allocation of a payment made from  
2 a separate fund to:

3 "(1) A trust to which an election to qualify for a  
4 marital deduction under Section 2056(b) (7) of the Internal  
5 Revenue Code of 1986, as amended, 26 U.S.C. Section  
6 2056(b) (7), as amended, has been made; or

7 "(2) A trust that qualifies for the marital  
8 deduction under Section 2056(b) (5) of the Internal Revenue  
9 Code of 1986, as amended, 26 U.S.C. Section 2056(b) (5), as  
10 amended.

11 "(e) Subsections (d), (f), and (g) do not apply if  
12 and to the extent that the series of payments would, without  
13 the application of subsection (d), qualify for the marital  
14 deduction under Section 2056(b) (7) (C) of the Internal Revenue  
15 Code of 1986, as amended, 26 U.S.C. Section 2056(b) (7) (C), as  
16 amended.

17 "(f) A fiduciary shall make a reasonable effort to  
18 determine the internal income of each separate fund for the  
19 accounting period as if the separate fund were a trust subject  
20 to this chapter. Upon request of the surviving spouse, the  
21 fiduciary shall make a demand on the person administering the  
22 separate fund to distribute the internal income to the trust.  
23 The fiduciary shall allocate a payment from the separate fund  
24 to income to the extent of the internal income of the separate  
25 fund and distribute that amount to the surviving spouse. The

1       fiduciary shall allocate the balance of the payment to  
2       principal. Upon request of the surviving spouse, the fiduciary  
3       shall allocate principal to income to the extent the internal  
4       income of the separate fund exceeds payments made from the  
5       separate fund to the trust during the accounting period.

6               "(g) If a fiduciary cannot determine the internal  
7       income of a separate fund pursuant to subsection (f) but can  
8       determine the value of the separate fund, the internal income  
9       of the separate fund for the accounting period is deemed to  
10      equal four percent of the fund's value, according to the most  
11      recent statement of value preceding the beginning of the  
12      accounting period. If the fiduciary can determine neither the  
13      internal income of the separate fund nor the fund's value, the  
14      internal income of the fund for the accounting period is  
15      deemed to equal the product of the interest rate and the  
16      present value of the expected future payments, as determined  
17      under Section 7520 of the Internal Revenue Code of 1986, as  
18      amended, 26 U.S.C. Section 7520, as amended, for the month  
19      preceding the accounting period for which the computation is  
20      made.

21              "(h) This section does not apply to a payment to  
22      which Section 19-3A-410 applies.

23              "(i) If a trust holds one or more separate funds and  
24      is an express unitrust under Section 19-3A-105, or is a  
25      unitrust by reason of conversion under Section 19-3A-106

1 (relating to power to convert to unitrust), the following  
 2 rules shall apply:

3 "(1) Income or net income from the separate funds  
 4 shall be determined as provided in the governing instrument in  
 5 the case of an express unitrust under 19-3A-105, or the  
 6 written notice referenced in Section 19-3A-106(a), the written  
 7 instrument referenced in Section 19-3A-106(b), or the order of  
 8 the court referenced in Section 19-3A-106(c) in the case of a  
 9 trust converted to a unitrust.

10 "(2) If subdivision (1) does not apply and the  
 11 fiduciary can determine the value of the separate fund, income  
 12 or net income with respect to such separate fund shall be an  
 13 amount equal to the unitrust percentage multiplied by the  
 14 value in the manner applied pursuant to Section 19-3A-105 or  
 15 Section 19-3A-106, as the case may be.

16 "(3) If subdivision (1) does not apply and the  
 17 fiduciary cannot determine the value of the separate fund,  
 18 income or net income with respect to such separate fund shall  
 19 be determined in the manner provided in the foregoing  
 20 provisions of this section."

21 Section 2. Sections 19-3A-105, 19-3A-106, and  
 22 19-3A-608 are added to the Code of Alabama 1975, to read as  
 23 follows:

24 §19-3A-105. Express Unitrusts.

1           Except to the extent otherwise provided in the  
 2 governing instrument, the following provisions shall apply to  
 3 a trust which by its governing instrument requires  
 4 distribution of a unitrust amount (whether payable in a single  
 5 sum or in installments), such trust to be referred to as an  
 6 "express unitrust":

7           (1) The income and net income of an express unitrust  
 8 is the unitrust amount, but only if the unitrust amount is not  
 9 less than three percent and not more than five percent of the  
 10 net fair market value of the trust assets. If the unitrust  
 11 amount is more than five percent of the net fair market value  
 12 of the trust assets, the income and net income shall be five  
 13 percent of the net fair market value of the trust assets, and  
 14 the excess over five percent shall be considered to be  
 15 principal of the trust.

16           (2) Expenses which would be deducted from income if  
 17 the trust were not an express unitrust shall not be deducted  
 18 from the unitrust amount.

19           (3) The trustee, from time to time, may determine  
 20 the following:

21           a. The frequency of payment of the unitrust amount  
 22 during the year;

23           b. Any adjustments to be made to the unitrust amount  
 24 due to other payments from or contributions to the trust;

25           c. The valuation dates to use;



1           d. How nonliquid or hard to value assets shall be  
2 valued, how frequently to value them and whether to estimate  
3 their value;

4           e. Whether to omit from the calculations the value  
5 of trust property occupied, used, or possessed by a  
6 beneficiary; and

7           f. Any other matters necessary for the proper  
8 functioning of the unitrust that are not inconsistent with the  
9 governing instrument.

10           §19-3A-106. Conversion to unitrust.

11           (a) Unless expressly prohibited by the governing  
12 instrument, a trustee may convert a trust into a unitrust as  
13 described in this section if all of the following apply:

14               (1) The trustee ~~determines~~ has concluded that the  
15 conversion will enable the trustee to better carry out the  
16 intent of the settlor or testator and the purposes of the  
17 trust.

18               (2) The trustee gives written notice of the  
19 trustee's intention to convert the trust into a unitrust,  
20 including the trustee's initial decisions as set forth below,  
21 to all the qualified beneficiaries. The written notice shall  
22 include the following:

23                   a. An explanation of how the unitrust will operate;

24                   b. The effective date of the conversion to a  
25 unitrust;

1 c. The unitrust percentage to be used;

2 d. The provisions for prorating a unitrust  
3 distribution for a short year in which a beneficiary's right  
4 to payments commences or ceases;

5 e. Whether the net fair market value of the trust  
6 assets will be determined annually or averaged over a  
7 designated multiple year smoothing period; and

8 f. Such other matters as the trustee deems  
9 appropriate for the proper functioning of the unitrust, which  
10 may include such matters as:

11 1. Whether to omit from the calculations trust  
12 property occupied, used, or possessed by a beneficiary,

13 2. How nonliquid or hard to value assets shall be  
14 valued, how frequently to value them, and whether to estimate  
15 their value, or

16 3. Whether the trust assets will be valued annually  
17 or more frequently.

18 (3) There is at least one sui juris income  
19 beneficiary and at least one sui juris presumptive remainder  
20 beneficiary.

21 (4) No beneficiary, or a person who may represent  
22 and bind a beneficiary who is not sui juris, objects to the  
23 conversion to a unitrust in a writing delivered to the trustee  
24 within 60 days of the mailing of the notice under subdivision

25 (2).

1           (5) If the trustee requests, the trustee receives  
2 consents from such beneficiaries as determined by the trustee.

3           (b) (1) Unless expressly prohibited by the governing  
4 instrument, the qualified beneficiaries of a trust may convert  
5 the trust into a unitrust as described in this section by a  
6 written instrument delivered to the trustee that sets forth  
7 all of the following:

8           a. A representation by the qualified beneficiaries  
9 that they have concluded that the conversion will enable the  
10 trustee to better carry out the intent of the settlor or  
11 testator and the purposes of the trust;

12           b. The effective date of the conversion to a  
13 unitrust, which shall not be earlier than 60 days after the  
14 date the written instrument is delivered to the trustee,  
15 unless the trustee consents to an earlier date, provided that  
16 such earlier date is not earlier than the date the written  
17 instrument is delivered to the trustee;

18           c. The unitrust percentage to be used;

19           d. The provisions for prorating a unitrust  
20 distribution for a short year in which a beneficiary's right  
21 to payments commences or ceases;

22           e. Whether the net fair market value of the trust  
23 assets will be determined annually or averaged over a  
24 designated multiple year smoothing period; and

1           f. Such other matters as the beneficiaries deem  
2 appropriate for the proper functioning of the unitrust, which  
3 may include such matters as:

4           1. Whether to omit from the calculations trust  
5 property occupied, used, or possessed by a beneficiary,

6           2. How nonliquid or hard to value assets shall be  
7 valued, how frequently to value them, and whether to estimate  
8 their value, or

9           3. Whether the trust's assets will be valued  
10 annually or more frequently.

11           (2) A trust may not convert into a unitrust unless  
12 the written instrument is executed by all qualified  
13 beneficiaries and the trustee(s), whether directly or by  
14 representation.

15           (3) Notwithstanding the foregoing, a trustee, prior  
16 to the effective date of the conversion, may seek court  
17 confirmation that the foregoing representations and  
18 requirements have been satisfied, in which case the conversion  
19 will not be effective before the conversion is confirmed by  
20 the court.

21           (c) (1) The trustee or a qualified beneficiary may  
22 petition the court to ~~order~~ review the conversion to a  
23 unitrust, even if any of the following apply:

24           a. A beneficiary timely objects to the conversion to  
25 a unitrust, ~~or~~

1           b. There are no sui juris income beneficiaries or  
2 sui juris presumptive remainder beneficiaries ~~-, or~~

3           c. The trustee does not consent.

4           (2) Unless expressly prohibited by the governing  
5 instrument, the court shall order the conversion if the court  
6 concludes:

7           a. that the conversion will enable the trustee to  
8 better carry out the intent of the settlor or testator and the  
9 purposes of the trust; or

10           b. all qualified beneficiaries have consented to the  
11 conversion.

12           (3) The court shall make the following decisions  
13 which shall be set forth in the order of the court approving  
14 the conversion:

15           a. The effective date of the conversion to a  
16 unitrust;

17           b. The unitrust percentage to be used;

18           c. The provisions for prorating a unitrust  
19 distribution for a short year in which a beneficiary's right  
20 to payments commences or ceases;

21           d. Whether the net fair market value of the trust  
22 assets will be determined annually or averaged over a  
23 designated multiple year smoothing period; and

1           e. Such other matters as the court deems appropriate  
2 for the proper functioning of the unitrust, which may include  
3 such matters as:

4           1. Whether to omit from the calculations trust  
5 property occupied, used, or possessed by a beneficiary;

6           2. How nonliquid or hard to value assets shall be  
7 valued, how frequently to value them, and whether to estimate  
8 their value; or

9           3. Whether the trust assets will be valued annually  
10 or more frequently.

11           (4) Court costs shall be charged to the trust or as  
12 otherwise determined by the court.

13           (d) The unitrust percentage with respect to a  
14 converted unitrust to be used in determining the unitrust  
15 amount shall be not less than three percent nor more than five  
16 percent, unless otherwise ordered by the court.

17           (e) During the period of time that the trust is a  
18 converted unitrust, all of the following apply:

19           (1) Notwithstanding any provision of this chapter to  
20 the contrary, the term "income" or "net income" in the  
21 governing instrument shall mean the unitrust amount.

22           (2) The frequency of distributions shall be  
23 determined in accordance with the governing instrument.

24           (3) If the written notice referenced in subsection  
25 (a), the written instrument referenced in subsection (b), or

1 the order of the court referenced in subsection (c) provides  
2 that the net fair market value of the trust assets will be  
3 averaged over a designated smoothing period, the net fair  
4 market value of the trust assets for purposes of determining  
5 the unitrust amount shall be the average of the net fair  
6 market value of the trust assets over the designated smoothing  
7 period.

8 (4) Any distribution in excess of the unitrust  
9 amount shall be deemed to have been paid out of the principal  
10 of the trust.

11 (5) Expenses which would be deducted from income if  
12 the trust were not a unitrust may not be deducted from the  
13 unitrust amount.

14 (f) A conversion to a unitrust does not affect a  
15 provision in the governing instrument directing or authorizing  
16 the trustee to distribute principal or authorizing a  
17 beneficiary to withdraw a portion or all of the principal.

18 (g) Except to the extent otherwise provided in the  
19 governing instrument, the written notice referenced in  
20 subsection (a), the written agreement referenced in subsection  
21 (b), or the order of the court referenced in subsection (c),  
22 the trustee, from time to time, may determine the following:

23 (1) The frequency of payment of the unitrust amount  
24 during the year;

1           (2) Any adjustments to be made to the unitrust  
2 amount due to other payments from or contributions to the  
3 trust;

4           (3) The valuation dates to use;

5           (4) How nonliquid or hard to value assets shall be  
6 valued, how frequently to value them, and whether to estimate  
7 their value;

8           (5) Whether to omit from the calculations the value  
9 of trust property occupied, used, or possessed by a  
10 beneficiary; and

11           (6) Any other matters necessary for the proper  
12 functioning of the unitrust that are not inconsistent with the  
13 written notice referenced in subsection (a), the written  
14 agreement referenced in subsection (b), or the order of the  
15 court referenced in subsection (c).

16           (h) Modification of the unitrust provisions of a  
17 converted unitrust may be implemented by the trustee following  
18 the same procedures as in subsection (a) for converting a  
19 trust into a unitrust with the exception that the written  
20 notice shall state the modifications, by the qualified  
21 beneficiaries following the same procedures as in subsection  
22 (b) for converting a trust into a unitrust with the exception  
23 that the written instrument shall state the modifications, or  
24 by the court pursuant to the petition of a beneficiary or the  
25 trustee. Modifications shall be set forth in the notice,



1 written instrument, or court order, as the case may be, that  
2 makes the modification. Modification may include any of the  
3 following:

4 (1) Changes or additions to any of the matters set  
5 forth in, or that could have been set forth in, the original  
6 notice, written instrument or court order, as the case may be,  
7 or any subsequent modifications thereto;

8 (2) Provisions for a distribution of net income, as  
9 would be determined if the trust were not a unitrust, in  
10 excess of the unitrust distribution if such distribution is  
11 necessary to preserve a tax benefit; or

12 (3) Reversions from a unitrust, in which case the  
13 trust shall be administered in accordance with its provisions  
14 prior to its conversion to a unitrust. Upon reconversion, the  
15 power to adjust under Section 19-3A-104, if any, shall be  
16 revived.

17 (i) A trust may not be converted into a unitrust in  
18 any of the following circumstances:

19 (1) If payment of the unitrust amount would change  
20 the aggregate annual amount payable to a beneficiary as a  
21 fixed annuity;

22 (2) If the trust is an "Institutional Fund" governed  
23 by the provisions of Section 19-3C-1, et seq.;

24 (3) If the conversion would reduce any amount  
25 permanently set aside for charitable purposes under the

1 governing instrument which is not expressed under the  
2 governing instrument as "income" or "net income" or determined  
3 pursuant to the terms of the governing instrument by reference  
4 to "income" or "net income";

5 (4) If the conversion would reduce the value of any  
6 interest for which a federal estate or gift tax charitable  
7 deduction has been taken, or would cause the reduction of an  
8 amount being disbursed or to be disbursed to a charity for  
9 which an income, estate, or gift tax deduction has been taken;

10 (5) If possessing or exercising the power to convert  
11 would cause an individual to be treated as the owner of all or  
12 part of the trust for federal income tax purposes, and the  
13 individual would not be treated as the owner if the trustee  
14 did not possess the power to convert;

15 (6) If possessing or exercising the power to convert  
16 would cause all or part of the trust assets to be subject to  
17 federal estate or gift tax with respect to an individual, and  
18 the assets would not be subject to federal estate or gift tax  
19 with respect to the individual if the trustee did not possess  
20 the power to convert; or

21 (7) If the conversion would result in the  
22 disallowance of a federal estate or gift tax marital or  
23 charitable deduction which would be allowed if the trustee did  
24 not have the power to convert.

1           (j) (1) If subsection (i)(5) or subsection (i)(6)  
2 applies because a trustee is a beneficiary and there is more  
3 than one trustee, a co-trustee to whom the provision does not  
4 apply may convert the trust unless the exercise of the power  
5 by the remaining trustee or trustees is prohibited by the  
6 governing instrument.

7           (2) If subsection (i)(5) or subsection (i)(6)  
8 applies to all the trustees, the trustees may petition the  
9 court to direct a conversion or the beneficiaries may convert  
10 under subsection (b).

11           (1) (1) A trustee may release the power conferred by  
12 subsection (a) to convert to a unitrust if any of the  
13 following apply:

14           a. The trustee is uncertain about whether possessing  
15 or exercising the power will cause a result described in  
16 subsection (i)(5), subsection (i)(6), or subsection (i)(7).

17           b. The trustee determines that possessing or  
18 exercising the power will or may deprive the trust of a tax  
19 benefit or impose a tax burden not described in subsection  
20 (i).

21           (2) The release may be permanent or for a specified  
22 period, including a period measured by the life of an  
23 individual.

24           §19-3A-608. Application of Alabama Uniform Trust  
25 Code.

1           The provisions of the Alabama Uniform Trust Code  
2           apply to the Alabama Principal and Income Act, except to the  
3           extent the provisions are inconsistent with the provisions of  
4           this chapter.

5           Section 3. This act shall become effective on the  
6           first day of the third month following its passage and  
7           approval by the Governor, or its otherwise becoming law.

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Speaker of the House of Representatives

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President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in  
and was passed by the House 25-APR-13, as amended.

Jeff Woodard  
Clerk

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Senate

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20-MAY-13

Passed