

ESTATE PLANNING RECODIFICATION

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Todd D. Weiler

House Sponsor: _____

LONG TITLE

General Description:

This bill recodifies estate planning statutes.

Highlighted Provisions:

This bill:

- ▶ clarifies statutes regarding payments and deposits by fiduciaries;
- ▶ clarifies definitions related to probate, fiduciaries, and trusts;
- ▶ recodifies Title 22, Fiduciaries and Trusts, to Title 75A, Fiduciaries, and Title 75B, Trusts;
- ▶ recodifies statutes on asset protection trusts to Title 75B, Trusts;
- ▶ recodifies chapters in Title 75, Utah Uniform Probate Code, to Title 75A, Fiduciaries;
- ▶ includes transition clauses; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

26B-6-201, as renumbered and amended by Laws of Utah 2023, Chapter 308



- 28 **58-9-602**, as last amended by Laws of Utah 2016, Chapter 256
- 29 **75-1-201**, as last amended by Laws of Utah 2013, Chapter 364
- 30 **75-2-205**, as last amended by Laws of Utah 2017, Chapter 204
- 31 **75-7-105**, as last amended by Laws of Utah 2019, Chapter 153
- 32 **75-7-107**, as last amended by Laws of Utah 2017, Chapter 204
- 33 **75-7-301**, as last amended by Laws of Utah 2017, Chapter 204
- 34 **75-7-501**, as last amended by Laws of Utah 2017, Chapter 204
- 35 **75-7-505**, as last amended by Laws of Utah 2023, Chapter 421
- 36 **75-7-814**, as last amended by Laws of Utah 2010, Chapter 93
- 37 **75-7-816**, as last amended by Laws of Utah 2017, Chapter 204
- 38 **76-5-111**, as last amended by Laws of Utah 2022, Chapter 181
- 39 **76-5-205**, as last amended by Laws of Utah 2022, Chapter 181
- 40 **76-6-513**, as last amended by Laws of Utah 2023, Chapter 111

41 ENACTS:

- 42 **75A-1-101**, Utah Code Annotated 1953
- 43 **75A-1-102**, Utah Code Annotated 1953
- 44 **75B-1-101**, Utah Code Annotated 1953
- 45 **75B-1-102**, Utah Code Annotated 1953
- 46 **75B-1-201**, Utah Code Annotated 1953
- 47 **75B-1-301**, Utah Code Annotated 1953

48 RENUMBERS AND AMENDS:

- 49 **75A-1-201**, (Renumbered from 22-1-1, Utah Code Annotated 1953)
- 50 **75A-1-202**, (Renumbered from 22-1-11, as last amended by Laws of Utah 2011,
- 51 Chapter 297)
- 52 **75A-1-203**, (Renumbered from 22-1-2, Utah Code Annotated 1953)
- 53 **75A-1-204**, (Renumbered from 22-1-4, Utah Code Annotated 1953)
- 54 **75A-1-205**, (Renumbered from 22-1-5, Utah Code Annotated 1953)
- 55 **75A-1-206**, (Renumbered from 22-1-6, Utah Code Annotated 1953)
- 56 **75A-1-207**, (Renumbered from 22-1-7, Utah Code Annotated 1953)
- 57 **75A-1-208**, (Renumbered from 22-1-8, Utah Code Annotated 1953)
- 58 **75A-1-209**, (Renumbered from 22-1-9, Utah Code Annotated 1953)

- 59 **75A-1-210**, (Renumbered from 22-1-10, Utah Code Annotated 1953)
- 60 **75A-2-101**, (Renumbered from 75-9-102, as enacted by Laws of Utah 2016, Chapter
- 61 256)
- 62 **75A-2-102**, (Renumbered from 75-9-103, as enacted by Laws of Utah 2016, Chapter
- 63 256)
- 64 **75A-2-103**, (Renumbered from 75-9-104, as enacted by Laws of Utah 2016, Chapter
- 65 256)
- 66 **75A-2-104**, (Renumbered from 75-9-105, as last amended by Laws of Utah 2022,
- 67 Chapter 430)
- 68 **75A-2-105**, (Renumbered from 75-9-106, as enacted by Laws of Utah 2016, Chapter
- 69 256)
- 70 **75A-2-106**, (Renumbered from 75-9-107, as enacted by Laws of Utah 2016, Chapter
- 71 256)
- 72 **75A-2-107**, (Renumbered from 75-9-108, as last amended by Laws of Utah 2022,
- 73 Chapter 138)
- 74 **75A-2-108**, (Renumbered from 75-9-109, as enacted by Laws of Utah 2016, Chapter
- 75 256)
- 76 **75A-2-109**, (Renumbered from 75-9-110, as enacted by Laws of Utah 2016, Chapter
- 77 256)
- 78 **75A-2-110**, (Renumbered from 75-9-111, as enacted by Laws of Utah 2016, Chapter
- 79 256)
- 80 **75A-2-111**, (Renumbered from 75-9-112, as enacted by Laws of Utah 2016, Chapter
- 81 256)
- 82 **75A-2-112**, (Renumbered from 75-9-113, as enacted by Laws of Utah 2016, Chapter
- 83 256)
- 84 **75A-2-113**, (Renumbered from 75-9-114, as enacted by Laws of Utah 2016, Chapter
- 85 256)
- 86 **75A-2-114**, (Renumbered from 75-9-115, as enacted by Laws of Utah 2016, Chapter
- 87 256)
- 88 **75A-2-115**, (Renumbered from 75-9-116, as enacted by Laws of Utah 2016, Chapter
- 89 256)

90 **75A-2-116**, (Renumbered from 75-9-117, as enacted by Laws of Utah 2016, Chapter
91 256)
92 **75A-2-117**, (Renumbered from 75-9-118, as enacted by Laws of Utah 2016, Chapter
93 256)
94 **75A-2-118**, (Renumbered from 75-9-119, as enacted by Laws of Utah 2016, Chapter
95 256)
96 **75A-2-119**, (Renumbered from 75-9-120, as enacted by Laws of Utah 2016, Chapter
97 256)
98 **75A-2-120**, (Renumbered from 75-9-121, as enacted by Laws of Utah 2016, Chapter
99 256)
100 **75A-2-121**, (Renumbered from 75-9-122, as enacted by Laws of Utah 2016, Chapter
101 256)
102 **75A-2-122**, (Renumbered from 75-9-123, as enacted by Laws of Utah 2016, Chapter
103 256)
104 **75A-2-201**, (Renumbered from 75-9-201, as enacted by Laws of Utah 2016, Chapter
105 256)
106 **75A-2-202**, (Renumbered from 75-9-202, as enacted by Laws of Utah 2016, Chapter
107 256)
108 **75A-2-203**, (Renumbered from 75-9-203, as enacted by Laws of Utah 2016, Chapter
109 256)
110 **75A-2-204**, (Renumbered from 75-9-204, as enacted by Laws of Utah 2016, Chapter
111 256)
112 **75A-2-205**, (Renumbered from 75-9-205, as enacted by Laws of Utah 2016, Chapter
113 256)
114 **75A-2-206**, (Renumbered from 75-9-206, as enacted by Laws of Utah 2016, Chapter
115 256)
116 **75A-2-207**, (Renumbered from 75-9-207, as enacted by Laws of Utah 2016, Chapter
117 256)
118 **75A-2-208**, (Renumbered from 75-9-208, as enacted by Laws of Utah 2016, Chapter
119 256)
120 **75A-2-209**, (Renumbered from 75-9-209, as enacted by Laws of Utah 2016, Chapter

121 256)
122 **75A-2-210**, (Renumbered from 75-9-210, as enacted by Laws of Utah 2016, Chapter
123 256)
124 **75A-2-211**, (Renumbered from 75-9-211, as enacted by Laws of Utah 2016, Chapter
125 256)
126 **75A-2-212**, (Renumbered from 75-9-212, as enacted by Laws of Utah 2016, Chapter
127 256)
128 **75A-2-213**, (Renumbered from 75-9-213, as enacted by Laws of Utah 2016, Chapter
129 256)
130 **75A-2-214**, (Renumbered from 75-9-214, as enacted by Laws of Utah 2016, Chapter
131 256)
132 **75A-2-215**, (Renumbered from 75-9-215, as enacted by Laws of Utah 2016, Chapter
133 256)
134 **75A-2-216**, (Renumbered from 75-9-216, as enacted by Laws of Utah 2016, Chapter
135 256)
136 **75A-2-217**, (Renumbered from 75-9-217, as enacted by Laws of Utah 2016, Chapter
137 256)
138 **75A-2-301**, (Renumbered from 75-9-301, as enacted by Laws of Utah 2016, Chapter
139 256)
140 **75A-2-302**, (Renumbered from 75-9-302, as enacted by Laws of Utah 2016, Chapter
141 256)
142 **75A-2-401**, (Renumbered from 75-9-401, as enacted by Laws of Utah 2016, Chapter
143 256)
144 **75A-2-402**, (Renumbered from 75-9-402, as enacted by Laws of Utah 2016, Chapter
145 256)
146 **75A-2-403**, (Renumbered from 75-9-403, as enacted by Laws of Utah 2016, Chapter
147 256)
148 **75A-3-101**, (Renumbered from 75-2a-103, as last amended by Laws of Utah 2023,
149 Chapters 139, 330)
150 **75A-3-102**, (Renumbered from 75-2a-102, as last amended by Laws of Utah 2008,
151 Chapter 107)

- 152 **75A-3-103**, (Renumbered from 75-2a-122, as last amended by Laws of Utah 2008,
153 Chapter 107)
- 154 **75A-3-104**, (Renumbered from 75-2a-124, as last amended by Laws of Utah 2008,
155 Chapter 107)
- 156 **75A-3-105**, (Renumbered from 75-2a-125, as enacted by Laws of Utah 2008, Chapter
157 107)
- 158 **75A-3-106**, (Renumbered from 75-2a-106, as last amended by Laws of Utah 2023,
159 Chapter 330)
- 160 **75A-3-107**, (Renumbered from 75-2a-120, as enacted by Laws of Utah 2007, Chapter
161 31)
- 162 **75A-3-201**, (Renumbered from 75-2a-104, as last amended by Laws of Utah 2009,
163 Chapter 99)
- 164 **75A-3-202**, (Renumbered from 75-2a-109, as last amended by Laws of Utah 2009,
165 Chapter 99)
- 166 **75A-3-203**, (Renumbered from 75-2a-108, as last amended by Laws of Utah 2008,
167 Chapter 107)
- 168 **75A-3-204**, (Renumbered from 75-2a-110, as last amended by Laws of Utah 2008,
169 Chapter 107)
- 170 **75A-3-205**, (Renumbered from 75-2a-112, as last amended by Laws of Utah 2008,
171 Chapter 107)
- 172 **75A-3-206**, (Renumbered from 75-2a-111, as last amended by Laws of Utah 2008,
173 Chapter 107)
- 174 **75A-3-207**, (Renumbered from 75-2a-115, as last amended by Laws of Utah 2008,
175 Chapter 107)
- 176 **75A-3-208**, (Renumbered from 75-2a-113, as last amended by Laws of Utah 2008,
177 Chapter 107)
- 178 **75A-3-301**, (Renumbered from 75-2a-107, as last amended by Laws of Utah 2008,
179 Chapter 107)
- 180 **75A-3-302**, (Renumbered from 75-2a-105, as last amended by Laws of Utah 2008,
181 Chapter 107)
- 182 **75A-3-303**, (Renumbered from 75-2a-117, as last amended by Laws of Utah 2009,

183 Chapter 99)
184 **75A-3-304**, (Renumbered from 75-2a-116, as enacted by Laws of Utah 2007, Chapter
185 31)
186 **75A-3-305**, (Renumbered from 75-2a-119, as last amended by Laws of Utah 2008,
187 Chapter 107)
188 **75A-3-306**, (Renumbered from 75-2a-123, as last amended by Laws of Utah 2008,
189 Chapter 107)
190 **75A-3-307**, (Renumbered from 75-2a-114, as last amended by Laws of Utah 2008,
191 Chapter 107)
192 **75A-3-308**, (Renumbered from 75-2a-118, as last amended by Laws of Utah 2008,
193 Chapter 107)
194 **75A-3-309**, (Renumbered from 75-2a-121, as last amended by Laws of Utah 2008,
195 Chapter 107)
196 **75A-4-101**, (Renumbered from 75-10-102, as enacted by Laws of Utah 2017, Chapter
197 125)
198 **75A-4-102**, (Renumbered from 75-10-103, as enacted by Laws of Utah 2017, Chapter
199 125)
200 **75A-4-103**, (Renumbered from 75-10-104, as enacted by Laws of Utah 2017, Chapter
201 125)
202 **75A-4-201**, (Renumbered from 75-10-201, as last amended by Laws of Utah 2018,
203 Chapter 244)
204 **75A-4-202**, (Renumbered from 75-10-202, as enacted by Laws of Utah 2017, Chapter
205 125)
206 **75A-4-203**, (Renumbered from 75-10-203, as enacted by Laws of Utah 2017, Chapter
207 125)
208 **75A-4-204**, (Renumbered from 75-10-204, as enacted by Laws of Utah 2017, Chapter
209 125)
210 **75A-4-205**, (Renumbered from 75-10-205, as enacted by Laws of Utah 2017, Chapter
211 125)
212 **75A-4-206**, (Renumbered from 75-10-206, as enacted by Laws of Utah 2017, Chapter
213 125)

214 **75A-4-301**, (Renumbered from 75-10-301, as enacted by Laws of Utah 2017, Chapter
215 125)
216 **75A-4-302**, (Renumbered from 75-10-302, as enacted by Laws of Utah 2017, Chapter
217 125)
218 **75A-4-303**, (Renumbered from 75-10-303, as enacted by Laws of Utah 2017, Chapter
219 125)
220 **75A-4-304**, (Renumbered from 75-10-304, as enacted by Laws of Utah 2017, Chapter
221 125)
222 **75A-4-305**, (Renumbered from 75-10-305, as last amended by Laws of Utah 2019,
223 Chapter 153)
224 **75A-4-306**, (Renumbered from 75-10-306, as enacted by Laws of Utah 2017, Chapter
225 125)
226 **75A-4-307**, (Renumbered from 75-10-307, as enacted by Laws of Utah 2017, Chapter
227 125)
228 **75A-4-308**, (Renumbered from 75-10-308, as enacted by Laws of Utah 2017, Chapter
229 125)
230 **75A-4-309**, (Renumbered from 75-10-309, as enacted by Laws of Utah 2017, Chapter
231 125)
232 **75A-4-310**, (Renumbered from 75-10-310, as enacted by Laws of Utah 2017, Chapter
233 125)
234 **75A-4-311**, (Renumbered from 75-10-311, as enacted by Laws of Utah 2017, Chapter
235 125)
236 **75A-4-312**, (Renumbered from 75-10-312, as enacted by Laws of Utah 2017, Chapter
237 125)
238 **75A-4-313**, (Renumbered from 75-10-313, as enacted by Laws of Utah 2017, Chapter
239 125)
240 **75A-4-314**, (Renumbered from 75-10-314, as enacted by Laws of Utah 2017, Chapter
241 125)
242 **75A-4-401**, (Renumbered from 75-10-401, as enacted by Laws of Utah 2017, Chapter
243 125)
244 **75A-4-402**, (Renumbered from 75-10-402, as enacted by Laws of Utah 2017, Chapter

245 125)
246 [75A-4-403](#), (Renumbered from 75-10-403, as enacted by Laws of Utah 2017, Chapter
247 125)
248 [75A-4-404](#), (Renumbered from 75-10-404, as enacted by Laws of Utah 2017, Chapter
249 125)
250 [75A-4-405](#), (Renumbered from 75-10-405, as enacted by Laws of Utah 2017, Chapter
251 125)
252 [75A-4-406](#), (Renumbered from 75-10-406, as enacted by Laws of Utah 2017, Chapter
253 125)
254 [75A-4-407](#), (Renumbered from 75-10-407, as enacted by Laws of Utah 2017, Chapter
255 125)
256 [75A-4-501](#), (Renumbered from 75-10-501, as enacted by Laws of Utah 2017, Chapter
257 125)
258 [75A-4-502](#), (Renumbered from 75-10-502, as enacted by Laws of Utah 2017, Chapter
259 125)
260 [75A-4-503](#), (Renumbered from 75-10-503, as enacted by Laws of Utah 2017, Chapter
261 125)
262 [75A-4-601](#), (Renumbered from 75-10-601, as enacted by Laws of Utah 2017, Chapter
263 125)
264 [75A-4-602](#), (Renumbered from 75-10-602, as enacted by Laws of Utah 2017, Chapter
265 125)
266 [75A-4-603](#), (Renumbered from 75-10-603, as enacted by Laws of Utah 2017, Chapter
267 125)
268 [75A-5-101](#), (Renumbered from 22-3-102, as last amended by Laws of Utah 2020,
269 Chapter 348)
270 [75A-5-102](#), (Renumbered from 22-3-103, as repealed and reenacted by Laws of Utah
271 2019, Chapter 495)
272 [75A-5-103](#), (Renumbered from 22-3-104, as last amended by Laws of Utah 2020,
273 Chapter 348)
274 [75A-5-201](#), (Renumbered from 22-3-201, as last amended by Laws of Utah 2020,
275 Chapter 348)

276 **75A-5-202**, (Renumbered from 22-3-202, as last amended by Laws of Utah 2020,
277 Chapter 348)
278 **75A-5-203**, (Renumbered from 22-3-203, as last amended by Laws of Utah 2020,
279 Chapter 348)
280 **75A-5-301**, (Renumbered from 22-3-301, as last amended by Laws of Utah 2020,
281 Chapter 348)
282 **75A-5-302**, (Renumbered from 22-3-302, as last amended by Laws of Utah 2020,
283 Chapter 348)
284 **75A-5-303**, (Renumbered from 22-3-303, as last amended by Laws of Utah 2020,
285 Chapter 348)
286 **75A-5-304**, (Renumbered from 22-3-304, as last amended by Laws of Utah 2020,
287 Chapter 348)
288 **75A-5-305**, (Renumbered from 22-3-305, as last amended by Laws of Utah 2020,
289 Chapter 348)
290 **75A-5-306**, (Renumbered from 22-3-306, as enacted by Laws of Utah 2019, Chapter
291 495)
292 **75A-5-307**, (Renumbered from 22-3-307, as last amended by Laws of Utah 2020,
293 Chapter 348)
294 **75A-5-308**, (Renumbered from 22-3-308, as last amended by Laws of Utah 2020,
295 Chapter 348)
296 **75A-5-309**, (Renumbered from 22-3-309, as last amended by Laws of Utah 2020,
297 Chapter 348)
298 **75A-5-401**, (Renumbered from 22-3-401, as last amended by Laws of Utah 2020,
299 Chapter 348)
300 **75A-5-402**, (Renumbered from 22-3-402, as last amended by Laws of Utah 2020,
301 Chapter 348)
302 **75A-5-403**, (Renumbered from 22-3-403, as last amended by Laws of Utah 2020,
303 Chapter 348)
304 **75A-5-404**, (Renumbered from 22-3-404, as last amended by Laws of Utah 2020,
305 Chapter 348)
306 **75A-5-405**, (Renumbered from 22-3-405, as last amended by Laws of Utah 2020,

307 Chapter 348)
308 [75A-5-406](#), (Renumbered from 22-3-406, as repealed and reenacted by Laws of Utah
309 2019, Chapter 495)
310 [75A-5-407](#), (Renumbered from 22-3-407, as last amended by Laws of Utah 2020,
311 Chapter 348)
312 [75A-5-408](#), (Renumbered from 22-3-408, as repealed and reenacted by Laws of Utah
313 2019, Chapter 495)
314 [75A-5-409](#), (Renumbered from 22-3-409, as last amended by Laws of Utah 2020,
315 Chapter 348)
316 [75A-5-410](#), (Renumbered from 22-3-410, as repealed and reenacted by Laws of Utah
317 2019, Chapter 495)
318 [75A-5-411](#), (Renumbered from 22-3-411, as last amended by Laws of Utah 2020,
319 Chapter 348)
320 [75A-5-412](#), (Renumbered from 22-3-412, as last amended by Laws of Utah 2020,
321 Chapter 348)
322 [75A-5-413](#), (Renumbered from 22-3-413, as repealed and reenacted by Laws of Utah
323 2019, Chapter 495)
324 [75A-5-414](#), (Renumbered from 22-3-414, as last amended by Laws of Utah 2020,
325 Chapter 348)
326 [75A-5-415](#), (Renumbered from 22-3-415, as last amended by Laws of Utah 2020,
327 Chapter 348)
328 [75A-5-416](#), (Renumbered from 22-3-416, as enacted by Laws of Utah 2019, Chapter
329 495)
330 [75A-5-501](#), (Renumbered from 22-3-501, as repealed and reenacted by Laws of Utah
331 2019, Chapter 495)
332 [75A-5-502](#), (Renumbered from 22-3-502, as repealed and reenacted by Laws of Utah
333 2019, Chapter 495)
334 [75A-5-503](#), (Renumbered from 22-3-503, as repealed and reenacted by Laws of Utah
335 2019, Chapter 495)
336 [75A-5-504](#), (Renumbered from 22-3-504, as repealed and reenacted by Laws of Utah
337 2019, Chapter 495)

338 **75A-5-505**, (Renumbered from 22-3-505, as last amended by Laws of Utah 2020,
339 Chapter 348)

340 **75A-5-506**, (Renumbered from 22-3-506, as last amended by Laws of Utah 2020,
341 Chapter 348)

342 **75A-5-507**, (Renumbered from 22-3-507, as last amended by Laws of Utah 2020,
343 Chapter 348)

344 **75A-5-601**, (Renumbered from 22-3-601, as last amended by Laws of Utah 2020,
345 Chapter 348)

346 **75A-5-602**, (Renumbered from 22-3-602, as last amended by Laws of Utah 2020,
347 Chapter 348)

348 **75A-5-701**, (Renumbered from 22-3-701, as last amended by Laws of Utah 2020,
349 Chapter 348)

350 **75A-5-702**, (Renumbered from 22-3-702, as last amended by Laws of Utah 2020,
351 Chapter 348)

352 **75A-5-703**, (Renumbered from 22-3-703, as last amended by Laws of Utah 2020,
353 Chapter 348)

354 **75A-5-801**, (Renumbered from 22-3-801, as last amended by Laws of Utah 2020,
355 Chapter 348)

356 **75A-5-802**, (Renumbered from 22-3-802, as enacted by Laws of Utah 2019, Chapter
357 495)

358 **75A-5-803**, (Renumbered from 22-3-803, as last amended by Laws of Utah 2020,
359 Chapter 348)

360 **75A-5-804**, (Renumbered from 22-3-804, as last amended by Laws of Utah 2020,
361 Chapter 348)

362 **75A-6-101**, (Renumbered from 75-11-102, as enacted by Laws of Utah 2017, Chapter
363 16)

364 **75A-6-102**, (Renumbered from 75-11-103, as enacted by Laws of Utah 2017, Chapter
365 16)

366 **75A-6-103**, (Renumbered from 75-11-104, as enacted by Laws of Utah 2017, Chapter
367 16)

368 **75A-6-104**, (Renumbered from 75-11-105, as enacted by Laws of Utah 2017, Chapter

369 16)
370 [75A-6-105](#), (Renumbered from 75-11-106, as enacted by Laws of Utah 2017, Chapter
371 16)
372 [75A-6-106](#), (Renumbered from 75-11-107, as enacted by Laws of Utah 2017, Chapter
373 16)
374 [75A-6-107](#), (Renumbered from 75-11-108, as enacted by Laws of Utah 2017, Chapter
375 16)
376 [75A-6-108](#), (Renumbered from 75-11-109, as enacted by Laws of Utah 2017, Chapter
377 16)
378 [75A-6-109](#), (Renumbered from 75-11-110, as enacted by Laws of Utah 2017, Chapter
379 16)
380 [75A-6-110](#), (Renumbered from 75-11-111, as enacted by Laws of Utah 2017, Chapter
381 16)
382 [75A-6-111](#), (Renumbered from 75-11-112, as enacted by Laws of Utah 2017, Chapter
383 16)
384 [75A-6-112](#), (Renumbered from 75-11-113, as enacted by Laws of Utah 2017, Chapter
385 16)
386 [75A-6-113](#), (Renumbered from 75-11-114, as last amended by Laws of Utah 2018,
387 Chapter 27)
388 [75A-6-114](#), (Renumbered from 75-11-115, as enacted by Laws of Utah 2017, Chapter
389 16)
390 [75A-6-115](#), (Renumbered from 75-11-116, as enacted by Laws of Utah 2017, Chapter
391 16)
392 [75A-6-116](#), (Renumbered from 75-11-117, as enacted by Laws of Utah 2017, Chapter
393 16)
394 [75A-6-117](#), (Renumbered from 75-11-118, as enacted by Laws of Utah 2017, Chapter
395 16)
396 [75A-7-101](#), (Renumbered from 22-5-2, as last amended by Laws of Utah 1995,
397 Chapter 20)
398 [75A-7-102](#), (Renumbered from 22-5-3, as enacted by Laws of Utah 1961, Chapter 46)
399 [75A-7-103](#), (Renumbered from 22-5-4, as last amended by Laws of Utah 1995,

400 Chapter 20)
401 **75A-7-104**, (Renumbered from 22-5-5, as last amended by Laws of Utah 1995,
402 Chapter 20)
403 **75A-7-105**, (Renumbered from 22-5-6, as last amended by Laws of Utah 1995,
404 Chapter 20)
405 **75A-7-106**, (Renumbered from 22-5-7, as enacted by Laws of Utah 1961, Chapter 46)
406 **75A-7-107**, (Renumbered from 22-5-8, as last amended by Laws of Utah 1995,
407 Chapter 20)
408 **75A-7-108**, (Renumbered from 22-5-9, as last amended by Laws of Utah 1995,
409 Chapter 20)
410 **75A-7-109**, (Renumbered from 22-5-10, as enacted by Laws of Utah 1961, Chapter 46)
411 **75A-7-110**, (Renumbered from 22-5-11, as enacted by Laws of Utah 1961, Chapter 46)
412 **75A-8-101**, (Renumbered from 75-5a-102, as enacted by Laws of Utah 1990, Chapter
413 272)
414 **75A-8-102**, (Renumbered from 75-5a-103, as enacted by Laws of Utah 1990, Chapter
415 272)
416 **75A-8-103**, (Renumbered from 75-5a-104, as enacted by Laws of Utah 1990, Chapter
417 272)
418 **75A-8-104**, (Renumbered from 75-5a-105, as enacted by Laws of Utah 1990, Chapter
419 272)
420 **75A-8-105**, (Renumbered from 75-5a-106, as enacted by Laws of Utah 1990, Chapter
421 272)
422 **75A-8-106**, (Renumbered from 75-5a-107, as enacted by Laws of Utah 1990, Chapter
423 272)
424 **75A-8-107**, (Renumbered from 75-5a-108, as enacted by Laws of Utah 1990, Chapter
425 272)
426 **75A-8-108**, (Renumbered from 75-5a-109, as enacted by Laws of Utah 1990, Chapter
427 272)
428 **75A-8-109**, (Renumbered from 75-5a-110, as last amended by Laws of Utah 2016,
429 Chapter 15)
430 **75A-8-110**, (Renumbered from 75-5a-111, as enacted by Laws of Utah 1990, Chapter

431 272)
432 **75A-8-111**, (Renumbered from 75-5a-112, as enacted by Laws of Utah 1990, Chapter
433 272)
434 **75A-8-112**, (Renumbered from 75-5a-113, as enacted by Laws of Utah 1990, Chapter
435 272)
436 **75A-8-113**, (Renumbered from 75-5a-114, as enacted by Laws of Utah 1990, Chapter
437 272)
438 **75A-8-114**, (Renumbered from 75-5a-115, as enacted by Laws of Utah 1990, Chapter
439 272)
440 **75A-8-115**, (Renumbered from 75-5a-116, as enacted by Laws of Utah 1990, Chapter
441 272)
442 **75A-8-116**, (Renumbered from 75-5a-117, as enacted by Laws of Utah 1990, Chapter
443 272)
444 **75A-8-117**, (Renumbered from 75-5a-118, as enacted by Laws of Utah 1990, Chapter
445 272)
446 **75A-8-118**, (Renumbered from 75-5a-119, as last amended by Laws of Utah 2005,
447 Chapter 71)
448 **75A-8-119**, (Renumbered from 75-5a-120, as enacted by Laws of Utah 1990, Chapter
449 272)
450 **75A-8-120**, (Renumbered from 75-5a-121, as enacted by Laws of Utah 1990, Chapter
451 272)
452 **75A-8-121**, (Renumbered from 75-5a-122, as enacted by Laws of Utah 1990, Chapter
453 272)
454 **75A-8-122**, (Renumbered from 75-5a-123, as enacted by Laws of Utah 1990, Chapter
455 272)
456 **75B-1-103**, (Renumbered from 22-2-1, Utah Code Annotated 1953)
457 **75B-1-202**, (Renumbered from 22-6-1, as enacted by Laws of Utah 1961, Chapter 174)
458 **75B-1-203**, (Renumbered from 22-6-2, as enacted by Laws of Utah 1961, Chapter 174)
459 **75B-1-302**, (Renumbered from 25-6-502, as last amended by Laws of Utah 2019,
460 Chapter 95)
461 REPEALS:

- 462 **22-3-101**, as repealed and reenacted by Laws of Utah 2019, Chapter 495
- 463 **22-5-1**, as last amended by Laws of Utah 1995, Chapter 20
- 464 **25-6-501**, as enacted by Laws of Utah 2017, Chapter 204
- 465 **75-2a-101**, as enacted by Laws of Utah 2007, Chapter 31
- 466 **75-5a-101**, as enacted by Laws of Utah 1990, Chapter 272
- 467 **75-9-101**, as enacted by Laws of Utah 2016, Chapter 256
- 468 **75-10-101**, as enacted by Laws of Utah 2017, Chapter 125
- 469 **75-11-101**, as enacted by Laws of Utah 2017, Chapter 16

471 *Be it enacted by the Legislature of the state of Utah:*

472 Section 1. Section **26B-6-201** is amended to read:

473 **26B-6-201. Definitions.**

474 As used in this part:

475 (1) "Abandonment" means any knowing or intentional action or failure to act,
 476 including desertion, by a person acting as a caretaker for a vulnerable adult that leaves the
 477 vulnerable adult without the means or ability to obtain necessary food, clothing, shelter, or
 478 medical or other health care.

479 (2) "Abuse" means:

480 (a) knowingly or intentionally:

- 481 (i) attempting to cause harm;
- 482 (ii) causing harm; or
- 483 (iii) placing another in fear of harm;

484 (b) unreasonable or inappropriate use of physical restraint, medication, or isolation that
 485 causes or is likely to cause harm to a vulnerable adult;

486 (c) emotional or psychological abuse;

487 (d) a sexual offense as described in Title 76, Chapter 5, Offenses Against the
 488 Individual; or

489 (e) deprivation of life sustaining treatment, or medical or mental health treatment,
 490 except:

491 (i) as provided in [~~Title 75, Chapter 2a, Advance Health Care Directive Act~~] Title 75A,
 492 Chapter 3, Health Care Decisions; or

- 493 (ii) when informed consent, as defined in Section 76-5-111, has been obtained.
- 494 (3) "Adult" means an individual who is 18 years old or older.
- 495 (4) "Adult protection case file" means a record, stored in any format, contained in a
496 case file maintained by Adult Protective Services.
- 497 (5) "Adult Protective Services" means the unit within the division responsible to
498 investigate abuse, neglect, and exploitation of vulnerable adults and provide appropriate
499 protective services.
- 500 (6) "Capacity to consent" means the ability of an individual to understand and
501 communicate regarding the nature and consequences of decisions relating to the individual, and
502 relating to the individual's property and lifestyle, including a decision to accept or refuse
503 services.
- 504 (7) "Caretaker" means a person or public institution that is entrusted with or assumes
505 the responsibility to provide a vulnerable adult with care, food, shelter, clothing, supervision,
506 medical or other health care, resource management, or other necessities for pecuniary gain, by
507 contract, or as a result of friendship, or who is otherwise in a position of trust and confidence
508 with a vulnerable adult, including a relative, a household member, an attorney-in-fact, a
509 neighbor, a person who is employed or who provides volunteer work, a court-appointed or
510 voluntary guardian, or a person who contracts or is under court order to provide care.
- 511 (8) "Counsel" means an attorney licensed to practice law in this state.
- 512 (9) "Database" means the statewide database maintained by the division under Section
513 26B-6-210.
- 514 (10) (a) "Dependent adult" means an individual 18 years old or older, who has a
515 physical or mental impairment that restricts the individual's ability to carry out normal
516 activities or to protect the individual's rights.
- 517 (b) "Dependent adult" includes an individual who has physical or developmental
518 disabilities or whose physical or mental capacity has substantially diminished because of age.
- 519 (11) "Elder abuse" means abuse, neglect, or exploitation of an elder adult.
- 520 (12) "Elder adult" means an individual 65 years old or older.
- 521 (13) "Emergency" means a circumstance in which a vulnerable adult is at an immediate
522 risk of death, serious physical injury, or serious physical, emotional, or financial harm.
- 523 (14) "Emergency protective services" means measures taken by Adult Protective

524 Services under time-limited, court-ordered authority for the purpose of remediating an
525 emergency.

526 (15) (a) "Emotional or psychological abuse" means knowing or intentional verbal or
527 nonverbal conduct directed at a vulnerable adult that results in the vulnerable adult suffering
528 mental anguish, emotional distress, fear, humiliation, degradation, agitation, or confusion.

529 (b) "Emotional or psychological abuse" includes intimidating, threatening, isolating,
530 coercing, or harassing.

531 (c) "Emotional or psychological abuse" does not include verbal or non-verbal conduct
532 by a vulnerable adult who lacks the capacity to intentionally or knowingly:

533 (i) engage in the conduct; or

534 (ii) cause mental anguish, emotional distress, fear, humiliation, degradation, agitation,
535 or confusion.

536 (16) "Exploitation" means an offense described in Section [76-5-111.3](#), [76-5-111.4](#), or
537 [76-5b-202](#).

538 (17) "Harm" means pain, mental anguish, emotional distress, hurt, physical or
539 psychological damage, physical injury, serious physical injury, suffering, or distress inflicted
540 knowingly or intentionally.

541 (18) "Inconclusive" means a finding by the division that there is not a reasonable basis
542 to conclude that abuse, neglect, or exploitation occurred.

543 (19) "Intimidation" means communication through verbal or nonverbal conduct which
544 threatens deprivation of money, food, clothing, medicine, shelter, social interaction,
545 supervision, health care, or companionship, or which threatens isolation or abuse.

546 (20) (a) "Isolation" means knowingly or intentionally preventing a vulnerable adult
547 from having contact with another person, unless the restriction of personal rights is authorized
548 by court order, by:

549 (i) preventing the vulnerable adult from communicating, visiting, interacting, or
550 initiating interaction with others, including receiving or inviting visitors, mail, or telephone
551 calls, contrary to the expressed wishes of the vulnerable adult, or communicating to a visitor
552 that the vulnerable adult is not present or does not want to meet with or talk to the visitor,
553 knowing that communication to be false;

554 (ii) physically restraining the vulnerable adult in order to prevent the vulnerable adult

555 from meeting with a visitor; or
556 (iii) making false or misleading statements to the vulnerable adult in order to induce
557 the vulnerable adult to refuse to receive communication from visitors or other family members.

558 (b) "Isolation" does not include an act:

559 (i) intended in good faith to protect the physical or mental welfare of the vulnerable
560 adult; or

561 (ii) performed pursuant to the treatment plan or instructions of a physician or other
562 professional advisor of the vulnerable adult.

563 (21) "Lacks capacity to consent" is as defined in Section 76-5-111.4.

564 (22) (a) "Neglect" means:

565 (i) (A) failure of a caretaker to provide necessary care, including nutrition, clothing,
566 shelter, supervision, personal care, or dental, medical, or other health care for a vulnerable
567 adult, unless the vulnerable adult is able to provide or obtain the necessary care without
568 assistance; or

569 (B) failure of a caretaker to provide protection from health and safety hazards or
570 maltreatment;

571 (ii) failure of a caretaker to provide care to a vulnerable adult in a timely manner and
572 with the degree of care that a reasonable person in a like position would exercise;

573 (iii) a pattern of conduct by a caretaker, without the vulnerable adult's informed
574 consent, resulting in deprivation of food, water, medication, health care, shelter, cooling,
575 heating, or other services necessary to maintain the vulnerable adult's well being;

576 (iv) knowing or intentional failure by a caretaker to carry out a prescribed treatment
577 plan that causes or is likely to cause harm to the vulnerable adult;

578 (v) self-neglect by the vulnerable adult; or

579 (vi) abandonment by a caretaker.

580 (b) "Neglect" does not include conduct, or failure to take action, that is permitted or
581 excused under [~~Title 75, Chapter 2a, Advance Health Care Directive Act~~] Title 75A, Chapter 3,
582 Health Care Decisions.

583 (23) "Physical injury" includes the damage and conditions described in Section
584 76-5-111.

585 (24) "Protected person" means a vulnerable adult for whom the court has ordered

586 protective services.

587 (25) "Protective services" means services to protect a vulnerable adult from abuse,
588 neglect, or exploitation.

589 (26) "Self-neglect" means the failure of a vulnerable adult to provide or obtain food,
590 water, medication, health care, shelter, cooling, heating, safety, or other services necessary to
591 maintain the vulnerable adult's well being when that failure is the result of the adult's mental or
592 physical impairment. Choice of lifestyle or living arrangements may not, by themselves, be
593 evidence of self-neglect.

594 (27) "Serious physical injury" is as defined in Section 76-5-111.

595 (28) "Supported" means a finding by the division that there is a reasonable basis to
596 conclude that abuse, neglect, or exploitation occurred.

597 (29) "Undue influence" occurs when a person:

598 (a) uses influence to take advantage of a vulnerable adult's mental or physical
599 impairment; or

600 (b) uses the person's role, relationship, or power:

601 (i) to exploit, or knowingly assist or cause another to exploit, the trust, dependency, or
602 fear of a vulnerable adult; or

603 (ii) to gain control deceptively over the decision making of the vulnerable adult.

604 (30) "Vulnerable adult" means an elder adult, or a dependent adult who has a mental or
605 physical impairment which substantially affects that person's ability to:

606 (a) provide personal protection;

607 (b) provide necessities such as food, shelter, clothing, or mental or other health care;

608 (c) obtain services necessary for health, safety, or welfare;

609 (d) carry out the activities of daily living;

610 (e) manage the adult's own financial resources; or

611 (f) comprehend the nature and consequences of remaining in a situation of abuse,
612 neglect, or exploitation.

613 (31) "Without merit" means a finding that abuse, neglect, or exploitation did not occur.

614 Section 2. Section 58-9-602 is amended to read:

615 **58-9-602. Determination of control of disposition.**

616 The right and duty to control the disposition of a deceased person, which may include

617 cremation as well as the location, manner and conditions of the disposition, and arrangements
618 for funeral goods and services to be provided, vests in the following degrees of relationship in
619 the order named, provided the person is at least 18 years old and is mentally competent:

620 (1) the person designated:

621 (a) in a written instrument, excluding a power of attorney that terminates at death under
622 Section [~~75-9-110~~] [75A-2-109](#), if the written instrument is acknowledged before a Notary
623 Public or executed with the same formalities required of a will under Section [75-2-502](#); or

624 (b) by a service member while serving in a branch of the United States Armed Forces
625 as defined in 10 U.S.C. Sec. 1481 in a federal Record of Emergency Data, DD Form 93 or
626 subsequent form;

627 (2) the surviving, legally recognized spouse of the decedent, unless a personal
628 representative was nominated by the decedent subsequent to the marriage, in which case the
629 personal representative shall take priority over the spouse;

630 (3) the person nominated to serve as the personal representative of the decedent's estate
631 in a will executed with the formalities required in Section [75-2-502](#);

632 (4) (a) the sole surviving child of the decedent, or if there is more than one child of the
633 decedent, the majority of the surviving children; and

634 (b) less than one-half of the surviving children are vested with the rights of this section
635 if they have used reasonable efforts to notify all other surviving children of their instructions
636 and are not aware of any opposition to those instructions on the part of more than one-half of
637 all surviving children;

638 (5) the surviving parent or parents of the decedent, however:

639 (a) if one of the surviving parents is absent, the remaining parent is vested with the
640 rights and duties of this section after reasonable efforts have been unsuccessful in locating the
641 absent surviving parent; or

642 (b) if the parents are divorced or separated and the decedent was an incapacitated adult,
643 the parent who was designated as the guardian of the decedent is vested with the rights and
644 duties of this section;

645 (6) (a) the surviving brother or sister of the decedent, or if there is more than one
646 sibling of the decedent, the majority of the surviving siblings; and

647 (b) less than the majority of surviving siblings, if they have used reasonable efforts to

648 notify all other surviving siblings of their instructions and are not aware of any opposition to
649 those instructions on the part of more than one-half of all surviving siblings;

650 (7) the person in the classes of the next degree of kinship, in descending order, under
651 the laws of descent and distribution to inherit the estate of the decedent, and if there is more
652 than one person of the same degree, any person of that degree may exercise the right of
653 disposition;

654 (8) in the absence of any person under Subsections (1) through (7), the person who was
655 the decedent's guardian at the time of death;

656 (9) any public official charged with arranging the disposition of deceased persons; and

657 (10) in the absence of any person under Subsections (1) through (9), any other person
658 willing to assume the responsibilities to act and arrange the final disposition of the decedent's
659 remains, including the personal representative of the decedent's estate or the funeral service
660 director with custody of the body, after attesting in writing that a good faith effort has been
661 made to no avail to contact the individuals referred to in Subsections (1) through (9).

662 Section 3. Section **75-1-201** is amended to read:

663 **75-1-201. Title definitions.**

664 ~~[Subject to additional definitions contained in the subsequent chapters that are~~
665 ~~applicable to specific chapters, parts, or sections, and unless the context otherwise requires, in~~
666 ~~this code]~~ As used in this title:

667 (1) "Agent" includes an attorney-in-fact under a durable or nondurable power of
668 attorney, an individual authorized to make decisions concerning another's health care, and an
669 individual authorized to make decisions for another under a natural death act.

670 (2) "Application" means a written request to the registrar for an order of informal
671 probate or appointment under Title 75, Chapter 3, Part 3, Informal Probate and Appointment
672 Proceedings.

673 (3) (a) "Beneficiary," as it relates to trust beneficiaries, includes:

674 (i) a person who has any present or future interest, vested or contingent~~[, and also~~
675 ~~includes]; and~~

676 (ii) the owner of an interest by assignment or other transfer~~;~~];

677 (b) "Beneficiary," as it relates to a charitable trust, includes any person entitled to
678 enforce the trust~~;~~].

679 (c) "Beneficiary," as it relates to a [~~"beneficiary of a beneficiary designation,"~~ refers to]
680 beneficiary of a beneficiary designation, means a beneficiary of:

681 (i) an insurance or annuity policy[~~, of~~];

682 (ii) an account with POD designation[~~, of~~];

683 (iii) a security registered in beneficiary form (TOD)[~~, or of~~];

684 (iv) a pension, profit-sharing, retirement, or similar benefit plan[~~;~~]; or

685 (v) other nonprobate transfer at death[~~, and~~].

686 (d) "Beneficiary," as it relates to a [~~"~~]beneficiary designated in a governing
687 instrument,[~~"~~] includes:

688 (i) a grantee of a deed, a devisee, a trust beneficiary, a beneficiary of a beneficiary
689 designation, a donee, appointee, or taker in default of a power of appointment[~~, and~~]; and

690 (ii) a person in whose favor a power of attorney or a power held in any individual,
691 fiduciary, or representative capacity is exercised.

692 (4) "Beneficiary designation" [~~refers to~~] means a governing instrument naming a
693 beneficiary of an insurance or annuity policy, of an account with POD designation, of a security
694 registered in beneficiary form (TOD), or of a pension, profit-sharing, retirement, or similar
695 benefit plan, or other nonprobate transfer at death.

696 (5) (a) "Child" includes any individual entitled to take as a child under this [~~code~~] title
697 by intestate succession from the parent whose relationship is involved [~~and excludes any~~
698 ~~person~~].

699 (b) "Child" does not include an individual who is only a stepchild, a foster child, a
700 grandchild, or any more remote descendant.

701 (6) (a) "Claims," in respect to estates of decedents and protected persons, includes
702 liabilities of the decedent or protected person, whether arising in contract, in tort, or otherwise,
703 and liabilities of the estate which arise at or after the death of the decedent or after the
704 appointment of a conservator, including funeral expenses and expenses of administration.

705 (b) "Claims" does not include estate or inheritance taxes, or demands or disputes
706 regarding title of a decedent or protected person to specific assets alleged to be included in the
707 estate.

708 (7) "Conservator" means a person who is appointed by a court to manage the estate of a
709 protected person.

710 (8) "Court" means any of the courts of record in this state having jurisdiction in matters
711 relating to the affairs of decedents.

712 (9) "Descendant" of an individual means all of his descendants of all generations, with
713 the relationship of parent and child at each generation being determined by the definition of
714 child and parent contained in this title.

715 (10) "Devise," when used as a noun, means a testamentary disposition of real or
716 personal property and, when used as a verb, means to dispose of real or personal property by
717 will.

718 (11) "Devisee" means any person designated in a will to receive a devise. For the
719 purposes of Title 75, Chapter 3, Probate of Wills and Administration, in the case of a devise to
720 an existing trust or trustee, or to a trustee in trust described by will, the trust or trustee is the
721 devisee, and the beneficiaries are not devisees.

722 (12) "Disability" means cause for a protective order as described by Section [75-5-401](#).

723 (13) "Distributee" means any person who has received property of a decedent from his
724 personal representative other than as a creditor or purchaser. A testamentary trustee is a
725 distributee only to the extent of distributed assets or increment thereto remaining in his hands.
726 A beneficiary of a testamentary trust to whom the trustee has distributed property received from
727 a personal representative is a distributee of the personal representative. For purposes of this
728 provision, "testamentary trustee" includes a trustee to whom assets are transferred by will, to
729 the extent of the devised assets.

730 (14) "Estate" includes the property of the decedent, trust, or other person whose affairs
731 are subject to this title as originally constituted and as it exists from time to time during
732 administration.

733 (15) "Exempt property" means that property of a decedent's estate which is described in
734 Section [75-2-403](#).

735 (16) "Fiduciary" includes a personal representative, guardian, conservator, and trustee.

736 (17) "Foreign personal representative" means a personal representative of another
737 jurisdiction.

738 (18) "Formal proceedings" means proceedings conducted before a judge with notice to
739 interested persons.

740 (19) "General personal representative" does not include a special administrator.

741 ~~[(19)]~~ (20) "Governing instrument" means a deed, will, trust, insurance or annuity
742 policy, account with POD designation, security registered in beneficiary form (TOD), pension,
743 profit-sharing, retirement, or similar benefit plan, instrument creating or exercising a power of
744 appointment or a power of attorney, or a dispositive, appointive, or nominative instrument of
745 any similar type.

746 ~~[(20)]~~ (21) (a) "Guardian" means a person who has qualified as a guardian of a minor
747 or incapacitated person pursuant to testamentary or court appointment, or by written instrument
748 as provided in Section 75-5-202.5~~[, but excludes one]~~.

749 (b) "Guardian" does not include a person who is merely a guardian ad litem.

750 ~~[(21)]~~ (22) "Heirs," except as controlled by Section 75-2-711, means persons, including
751 the surviving spouse and state, who are entitled under the statutes of intestate succession to the
752 property of a decedent.

753 ~~[(22)]~~ (23) "Incapacitated" ~~[or "incapacity" is measured by functional limitations and]~~
754 means a judicial determination after proof by clear and convincing evidence that an adult's
755 ability to do the following is impaired to the extent that the individual lacks the ability, even
756 with appropriate technological assistance, to meet the essential requirements for financial
757 protection or physical health, safety, or self-care:

758 (a) receive and evaluate information;

759 (b) make and communicate decisions; or

760 (c) provide for necessities such as food, shelter, clothing, health care, or safety.

761 (24) "Incapacity" means incapacitated.

762 ~~[(23)]~~ (25) "Informal proceedings" mean ~~[those]~~ a proceeding conducted without
763 notice to interested persons by an officer of the court acting as a registrar for probate of a will
764 or appointment of a personal representative.

765 ~~[(24)]~~ (26) (a) "Interested person" includes heirs, devisees, children, spouses, creditors,
766 beneficiaries, and any others having a property right in or claim against a trust estate or the
767 estate of a decedent, ward, or protected person. ~~[It also]~~

768 (b) "Interested person" includes persons having priority for appointment as personal
769 representative, other fiduciaries representing interested persons, a settlor of a trust, if living, or
770 the settlor's legal representative, if any, if the settlor is living but incapacitated. ~~[The meaning
771 as it relates to particular persons may vary from time to time and shall be determined according~~

772 to the particular purposes of, and matter involved in, any proceeding.]

773 ~~[(25)]~~ (27) "Issue" of a person means descendant as defined in Subsection (9).

774 ~~[(26)]~~ (28) (a) "Joint tenants with the right of survivorship" [~~and "community property~~
775 ~~with the right of survivorship"~~] includes coowners of property held under circumstances that
776 entitle one or more to the whole of the property on the death of the other [~~or others, but~~
777 ~~excludes~~].

778 (b) "Joint tenants with the right of survivorship" does not include forms of
779 coownership registration in which the underlying ownership of each party is in proportion to
780 that party's contribution.

781 ~~[(27)]~~ (29) "Lease" includes an oil, gas, or other mineral lease.

782 ~~[(28)]~~ (30) "Letters" includes letters testamentary, letters of guardianship, letters of
783 administration, and letters of conservatorship.

784 ~~[(29)]~~ (31) "Minor" means a person who is under 18 years [~~of age~~] old.

785 (32) "Minor protected person" means a minor for whom a conservator has been
786 appointed because of minority.

787 (33) "Minor ward" means a minor for whom a guardian has been appointed solely
788 because of minority.

789 ~~[(30)]~~ (34) "Mortgage" means any conveyance, agreement, or arrangement in which
790 property is used as security.

791 ~~[(31)]~~ (35) "Nonresident decedent" means a decedent who was domiciled in another
792 jurisdiction at the time of [~~his~~] the decedent's death.

793 ~~[(32)]~~ (36) "Organization" includes a corporation, limited liability company, business
794 trust, estate, trust, partnership, joint venture, association, government or governmental
795 subdivision or agency, or any other legal or commercial entity.

796 ~~[(33)]~~ (37) (a) "Parent" includes any person entitled to take, or who would be entitled
797 to take if the child died without a will, as a parent under this [~~code~~] title by intestate succession
798 from the child whose relationship is in question [~~and excludes~~].

799 (b) "Parent" does not include any person who is only a stepparent, foster parent, or
800 grandparent.

801 ~~[(34)]~~ (38) "Payor" means a trustee, insurer, business entity, employer, government,
802 governmental agency or subdivision, or any other person authorized or obligated by law or a

803 governing instrument to make payments.

804 ~~[(35)]~~ (39) "Person" means an individual or an organization.

805 ~~[(36)]~~ (40) ~~[(a)]~~ "Personal representative" includes executor, administrator, successor
806 personal representative, special administrator, and persons who perform substantially the same
807 function under the law governing their status.

808 ~~[(b) "General personal representative" excludes special administrator.]~~

809 ~~[(37)]~~ (41) "Petition" means a written request to the court for an order after notice.

810 ~~[(38)]~~ (42) "Proceeding" includes action at law and suit in equity.

811 ~~[(39)]~~ (43) "Property" includes both real and personal property or any interest therein
812 and means anything that may be the subject of ownership.

813 ~~[(40)]~~ (44) "Protected person" means a person for whom a conservator has been
814 appointed. ~~[A "minor protected person" means a minor for whom a conservator has been
815 appointed because of minority].~~

816 ~~[(41)]~~ (45) "Protective proceeding" means a proceeding described in Section 75-5-401.

817 ~~[(42)]~~ (46) "Record" means information that is inscribed on a tangible medium or that
818 is stored in an electronic or other medium and is retrievable in perceivable form.

819 ~~[(43)]~~ (47) "Registrar" refers to the official of the court designated to perform the
820 functions of registrar as provided in Section 75-1-307.

821 ~~[(44)]~~ (48) "Security" includes any note, stock, treasury stock, bond, debenture,
822 evidence of indebtedness, certificate of interest, or participation in an oil, gas, or mining title or
823 lease or in payments out of production under such a title or lease, collateral trust certificate,
824 transferable share, voting trust certificate, and, in general, any interest or instrument commonly
825 known as a security, or any certificate of interest or participation, any temporary or interim
826 certificate, receipt, or certificate of deposit for, or any warrant or right to subscribe to or
827 purchase, any of the foregoing.

828 ~~[(45)]~~ (49) "Settlement," in reference to a decedent's estate, includes the full process of
829 administration, distribution, and closing.

830 ~~[(46)]~~ (50) "Sign" means, with present intent to authenticate or adopt a record other
831 than a will:

832 (a) to execute or adopt a tangible symbol; or

833 (b) to attach to or logically associate with the record an electronic symbol, sound, or

834 process.

835 [(47)] (51) "Special administrator" means a personal representative as described in
836 Sections 75-3-614 through 75-3-618.

837 [(48)] (52) "State" means a state of the United States, the District of Columbia, the
838 Commonwealth of Puerto Rico, any territory or insular possession subject to the jurisdiction of
839 the United States, or a Native American tribe or band recognized by federal law or formally
840 acknowledged by a state.

841 [(49)] (53) "Successor personal representative" means a personal representative, other
842 than a special administrator, who is appointed to succeed a previously appointed personal
843 representative.

844 [(50)] (54) "Successors" means persons, other than creditors, who are entitled to
845 property of a decedent under the decedent's will or this title.

846 [(51)] (55) "Supervised administration" refers to the proceedings described in Title 75,
847 Chapter 3, Part 5, Supervised Administration.

848 [(52)] (56) (a) "Survive," except for purposes of Part 3 of Article VI, Uniform TOD
849 Security Registration Act, means that an individual has neither predeceased an event, including
850 the death of another individual, nor is considered to have predeceased an event under Section
851 75-2-104 or 75-2-702. [~~The term~~]

852 (b) "Survive" includes its derivatives, such as "survives," "survived," "survivor," and
853 "surviving."

854 [(53)] (57) "Testacy proceeding" means a proceeding to establish a will or determine
855 intestacy.

856 [(54)] (58) "Testator" includes an individual of either sex.

857 [(55)] (59) (a) "Trust" includes:

858 (i) a health savings account, as defined in Section 223[;] of the Internal Revenue
859 Code[; any];

860 (ii) an express trust, private or charitable, with additions thereto, wherever and
861 however created[; ~~The term also includes~~]; or

862 (iii) a trust created or determined by judgment or decree under which the trust is to be
863 administered in the manner of an express trust. [~~The term excludes other constructive trusts,~~
864 ~~and it excludes resulting trusts, conservatorships, personal representatives, trust accounts]~~

865 (b) "Trust" does not include:
866 (i) a constructive trust;
867 (ii) a resulting trust;
868 (iii) a conservatorship;
869 (iv) a personal representative;
870 (v) a trust account as defined in Title 75, Chapter 6, Nonprobate Transfers~~[-custodial~~
871 ~~arrangements pursuant to any];~~
872 (vi) a custodial arrangement under Title 75A, Chapter 8, Uniform Transfers To Minors
873 Act~~[-business trusts];~~
874 (vii) a business trust providing for certificates to be issued to beneficiaries~~[-];~~
875 (viii) a common trust ~~[funds,] fund;~~
876 (ix) a voting ~~[trusts,] trust;~~
877 (x) a preneed funeral ~~[plans] plan~~ under Title 58, Chapter 9, Funeral Services
878 Licensing Act~~[-security arrangements, liquidation trusts, and trusts];~~
879 (xi) a security arrangement;
880 (xii) a liquidation trust;
881 (xiii) a trust for the primary purpose of paying debts, dividends, interest, salaries,
882 wages, profits, pensions, or employee benefits of any kind~~[-and];~~ or
883 (xiv) any arrangement under which a person is nominee or escrowee for another.
884 ~~[(56)]~~ (60) "Trustee" includes an original, additional, and successor trustee, and
885 cotrustee, whether or not appointed or confirmed by the court.
886 ~~[(57)]~~ (61) "Ward" means a person for whom a guardian has been appointed. [A
887 "minor ward" is a minor for whom a guardian has been appointed solely because of minority.]
888 ~~[(58)]~~ (62) "Will" includes codicil and any testamentary instrument which merely
889 appoints an executor, revokes or revises another will, nominates a guardian, or expressly
890 excludes or limits the right of an individual or class to succeed to property of the decedent
891 passing by intestate succession.
892 Section 4. Section **75-2-205** is amended to read:
893 **75-2-205. Decedent's nonprobate transfers to others.**
894 Unless excluded under Section **75-2-208**, the value of the augmented estate includes the
895 value of the decedent's nonprobate transfers to others, not included under Section **75-2-204**, of

896 any of the types described in this section, in the amount provided respectively for each type of
897 transfer:

898 (1) Property owned or owned in substance by the decedent immediately before death
899 that passed outside probate at the decedent's death. Property included under this category
900 consists of the property described in this Subsection (1).

901 (a) (i) Property over which the decedent alone, immediately before death, held a
902 presently exercisable general power of appointment.

903 (ii) The amount included is the value of the property subject to the power, to the extent
904 the property passed at the decedent's death, by exercise, release, lapse, in default, or otherwise,
905 to or for the benefit of any person other than the decedent's estate or surviving spouse.

906 (b) (i) The decedent's fractional interest in property held by the decedent in joint
907 tenancy with the right of survivorship.

908 (ii) The amount included is the value of the decedent's fractional interest, to the extent
909 the fractional interest passed by right of survivorship at the decedent's death to a surviving joint
910 tenant other than the decedent's surviving spouse.

911 (c) (i) The decedent's ownership interest in property or accounts held in POD, TOD, or
912 co-ownership registration with the right of survivorship.

913 (ii) The amount included is the value of the decedent's ownership interest, to the extent
914 the decedent's ownership interest passed at the decedent's death to or for the benefit of any
915 person other than the decedent's estate or surviving spouse.

916 (d) (i) Proceeds of insurance, including accidental death benefits, on the life of the
917 decedent, if the decedent owned the insurance policy immediately before death or if and to the
918 extent the decedent alone and immediately before death held a presently exercisable general
919 power of appointment over the policy or its proceeds.

920 (ii) The amount included:

921 (A) is the value of the proceeds, to the extent they were payable at the decedent's death
922 to or for the benefit of any person other than the decedent's estate or surviving spouse; and

923 (B) may not exceed the greater of the cash surrender value of the policy immediately
924 prior to the death of the decedent or the amount of premiums paid on the policy during the
925 decedent's life.

926 (2) Property transferred in any of the forms described in this Subsection (2) by the

927 decedent during marriage:

928 (a) (i) Any irrevocable transfer in which the decedent retained the right to the
929 possession or enjoyment of, or to the income from, the property if and to the extent the
930 decedent's right terminated at or continued beyond the decedent's death.

931 (ii) An irrevocable transfer in trust which includes a restriction on transfer of the
932 decedent's interest as settlor and beneficiary as described in Section [~~25-6-502~~] [75B-1-302](#).

933 (iii) The amount included is the value of the fraction of the property to which the right
934 or restriction related, to the extent the fraction of the property passed outside probate to or for
935 the benefit of any person other than the decedent's estate or surviving spouse.

936 (b) (i) Any transfer in which the decedent created a power over income or property,
937 exercisable by the decedent alone or in conjunction with any other person, or exercisable by a
938 nonadverse party, to or for the benefit of the decedent, creditors of the decedent, the decedent's
939 estate, or creditors of the decedent's estate.

940 (ii) The amount included with respect to a power over property is the value of the
941 property subject to the power, and the amount included with respect to a power over income is
942 the value of the property that produces or produced the income, to the extent the power in
943 either case was exercisable at the decedent's death to or for the benefit of any person other than
944 the decedent's surviving spouse or to the extent the property passed at the decedent's death, by
945 exercise, release, lapse, in default, or otherwise, to or for the benefit of any person other than
946 the decedent's estate or surviving spouse.

947 (iii) If the power is a power over both income and property and Subsection (2)(b)(ii)
948 produces different amounts, the amount included is the greater amount.

949 (3) Property that passed during marriage and during the two-year period next preceding
950 the decedent's death as a result of a transfer by the decedent if the transfer was of any of the
951 types described in this Subsection (3).

952 (a) (i) Any property that passed as a result of the termination of a right or interest in, or
953 power over, property that would have been included in the augmented estate under Subsection
954 (1)(a), (b), or (c), or under Subsection (2), if the right, interest, or power had not terminated
955 until the decedent's death.

956 (ii) The amount included is the value of the property that would have been included
957 under Subsection (1)(a), (b), (c), or Subsection (2) if the property were valued at the time the

958 right, interest, or power terminated, and is included only to the extent the property passed upon
959 termination to or for the benefit of any person other than the decedent or the decedent's estate,
960 spouse, or surviving spouse.

961 (iii) (A) As used in this Subsection (3)(a), "termination," with respect to a right or
962 interest in property, occurs when the right or interest terminated by the terms of the governing
963 instrument or the decedent transferred or relinquished the right or interest, and, with respect to
964 a power over property, occurs when the power terminated by exercise, release, lapse, default, or
965 otherwise.

966 (B) With respect to a power described in Subsection (1)(a), "termination" occurs when
967 the power terminated by exercise or release, but not otherwise.

968 (b) (i) Any transfer of or relating to an insurance policy on the life of the decedent if
969 the proceeds would have been included in the augmented estate under Subsection (1)(d) had
970 the transfer not occurred.

971 (ii) The amount included:

972 (A) is the value of the insurance proceeds to the extent the proceeds were payable at
973 the decedent's death to or for the benefit of any person other than the decedent's estate or
974 surviving spouse; and

975 (B) may not exceed the greater of the cash surrender value of the policy immediately
976 prior to the death of the decedent or the amount of premiums paid on the policy during the
977 decedent's life.

978 (c) (i) Any transfer of property, to the extent not otherwise included in the augmented
979 estate, made to or for the benefit of a person other than the decedent's surviving spouse.

980 (ii) The amount included is the value of the transferred property to the extent the
981 aggregate transfers to any one donee in either of the two years exceeded \$10,000.

982 Section 5. Section **75-7-105** is amended to read:

983 **75-7-105. Default and mandatory rules.**

984 (1) Except as otherwise provided in the terms of the trust, this chapter governs the
985 duties and powers of a trustee, relations among trustees, and the rights and interests of a
986 beneficiary.

987 (2) Except as specifically provided in this chapter, the terms of a trust prevail over any
988 provision of this chapter except:

- 989 (a) the requirements for creating a trust;
- 990 (b) subject to Sections 75-12-109, 75-12-111, and 75-12-112, the duty of a trustee to
991 act in good faith and in accordance with the purposes of the trust;
- 992 (c) the requirement that a trust and the terms of the trust be for the benefit of the trust's
993 beneficiaries;
- 994 (d) the power of the court to modify or terminate a trust under Sections 75-7-410
995 through 75-7-416;
- 996 (e) the effect of a spendthrift provision, Section [25-6-502] 75B-1-302, and the rights
997 of certain creditors and assignees to reach a trust as provided in Part 5, Creditor's Claims -
998 Spendthrift and Discretionary Trusts;
- 999 (f) the power of the court under Section 75-7-702 to require, dispense with, or modify
1000 or terminate a bond;
- 1001 (g) the effect of an exculpatory term under Section 75-7-1008;
- 1002 (h) the rights under Sections 75-7-1010 through 75-7-1013 of a person other than a
1003 trustee or beneficiary;
- 1004 (i) periods of limitation for commencing a judicial proceeding; and
- 1005 (j) the subject-matter jurisdiction of the court and venue for commencing a proceeding
1006 as provided in Sections 75-7-203 and 75-7-205.

1007 Section 6. Section 75-7-107 is amended to read:

1008 **75-7-107. Governing law.**

1009 (1) ~~[For purposes of]~~ As used in this section:

1010 (a) "Foreign trust" means a trust that is created in another state or country and valid in
1011 the state or country in which the trust is created.

1012 (b) "State law provision" means a provision that the laws of a named state govern the
1013 validity, construction, and administration of a trust.

1014 (2) If a trust has a state law provision specifying this state, the validity, construction,
1015 and administration of the trust are to be governed by the laws of this state if any administration
1016 of the trust is done in this state.

1017 (3) For all trusts created on or after December 31, 2003, if a trust does not have a state
1018 law provision, the validity, construction, and administration of the trust are to be governed by
1019 the laws of this state if the trust is administered in this state.

- 1020 (4) A trust shall be considered to be administered in this state if:
- 1021 (a) the trust states that this state is the place of administration, and any administration
- 1022 of the trust is done in this state; or
- 1023 (b) the place of business where the fiduciary transacts a major portion of its
- 1024 administration of the trust is in this state.
- 1025 (5) If a foreign trust is administered in this state as provided in this section, the
- 1026 following provisions are effective and enforceable under the laws of this state:
- 1027 (a) a provision in the trust that restricts the transfer of trust assets in a manner similar
- 1028 to Section [~~25-6-502~~] [75B-1-302](#);
- 1029 (b) a provision that allows the trust to be perpetual; or
- 1030 (c) a provision that is not expressly prohibited by the law of this state.
- 1031 (6) A foreign trust that moves its administration to this state is valid whether or not the
- 1032 trust complied with the laws of this state at the time of the trust's creation or after the trust's
- 1033 creation.
- 1034 (7) Unless otherwise designated in the trust instrument, a trust is administered in this
- 1035 state if it meets the requirements of Subsection (4).

1036 Section 7. Section **75-7-301** is amended to read:

1037 **75-7-301. Basic effect.**

1038 (1) Notice to a person who may represent and bind another person under this part has

1039 the same effect as if notice were given directly to the other person.

1040 (2) The consent of a person who may represent and bind another person under this part

1041 is binding on the person represented unless the person represented objects to the representation

1042 before the consent would otherwise have become effective.

1043 (3) Except as otherwise provided in Sections [75-7-411](#) and [~~25-6-502~~] [75B-1-302](#), a

1044 person who under this part may represent a settlor who lacks capacity may receive notice and

1045 give a binding consent on the settlor's behalf.

1046 Section 8. Section **75-7-501** is amended to read:

1047 **75-7-501. Rights of beneficiary's creditor or assignee.**

1048 To the extent a beneficiary's interest is not protected by a spendthrift provision or

1049 Section [~~25-6-502~~] [75B-1-302](#), the court may authorize a creditor or assignee of the beneficiary

1050 to reach the beneficiary's interest by attachment of present or future distributions to or for the

1051 benefit of the beneficiary or other means. The court may limit the award to relief as is
1052 appropriate under the circumstances.

1053 Section 9. Section **75-7-505** is amended to read:

1054 **75-7-505. Creditor's claim against settlor.**

1055 Regardless of whether the terms of a trust contain a spendthrift provision, the following
1056 rules apply:

1057 (1) During the lifetime of the settlor, the property of a revocable trust is subject to the
1058 claims of the settlor's creditors. If a revocable trust has more than one settlor, the amount the
1059 creditor or assignee of a particular settlor may reach may not exceed the settlor's interest in the
1060 portion of the trust attributable to that settlor's contribution.

1061 (2) (a) With respect to an irrevocable trust other than an irrevocable trust that meets the
1062 requirements of Section [~~25-6-502~~] [75B-1-302](#), a creditor or assignee of the settlor may reach
1063 the maximum amount that can be distributed to or for the settlor's benefit.

1064 (b) With respect to an irrevocable trust that has more than one settlor, other than an
1065 irrevocable trust that meets the requirements of Section [~~25-6-502~~] [75B-1-302](#), the amount a
1066 creditor or assignee of a particular settlor may reach may not exceed the settlor's interest in the
1067 portion of the trust attributable to that settlor's contribution.

1068 (c) Notwithstanding Subsections (2)(a) and (b), a creditor of a settlor may not satisfy
1069 the creditor's claim from an irrevocable trust solely because the trustee may make a
1070 discretionary distribution reimbursing the settlor for income tax liability of the settlor
1071 attributable to the income of the irrevocable trust, when the distribution is:

- 1072 (i) subject to the discretion of a trustee who is not the settlor;
1073 (ii) subject to the consent of an advisor who is not the settlor; or
1074 (iii) at the direction of an advisor who is not the settlor.

1075 (3) After the death of a settlor, and subject to the settlor's right to direct the source from
1076 which liabilities will be paid, the property of a trust that was revocable at the settlor's death, but
1077 not property received by the trust as a result of the death of the settlor which is otherwise
1078 exempt from the claims of the settlor's creditors, is subject to claims of the settlor's creditors,
1079 costs of administration of the settlor's estate, the expenses of the settlor's funeral and disposal
1080 of remains, and statutory allowances to a surviving spouse and children to the extent the
1081 settlor's probate estate is inadequate to satisfy those claims, costs, expenses, and allowances.

1082 Section 10. Section **75-7-814** is amended to read:

1083 **75-7-814. Specific powers of trustee.**

1084 (1) Without limiting the authority conferred by Section **75-7-813**, a trustee may:

1085 (a) collect trust property and accept or reject additions to the trust property from a
1086 settlor or any other person;

1087 (b) acquire or sell property, for cash or on credit, at public or private sale;

1088 (c) exchange, partition, or otherwise change the character of trust property;

1089 (d) deposit trust money in an account in a regulated financial service institution;

1090 (e) borrow money, with or without security from any financial institution, including a
1091 financial institution that is serving as a trustee or one of its affiliates, and mortgage or pledge
1092 trust property for a period within or extending beyond the duration of the trust;

1093 (f) with respect to an interest in a proprietorship, partnership, limited liability company,
1094 business trust, corporation, or other form of business or enterprise, continue the business or
1095 other enterprise and take any action that may be taken by shareholders, members, or property
1096 owners, including merging, dissolving, or otherwise changing the form of business
1097 organization or contributing additional capital;

1098 (g) with respect to stocks or other securities, exercise the rights of an absolute owner,
1099 including the right to:

1100 (i) vote, or give proxies to vote, with or without power of substitution, or enter into or
1101 continue a voting trust agreement;

1102 (ii) hold a security in the name of a nominee or in other form without disclosure of the
1103 trust so that title may pass by delivery;

1104 (iii) pay calls, assessments, and other sums chargeable or accruing against the
1105 securities, and sell or exercise stock subscription or conversion rights; and

1106 (iv) deposit the securities with a depository or other regulated financial service
1107 institution;

1108 (h) with respect to an interest in real property, construct, or make ordinary or
1109 extraordinary repairs to, alterations to, or improvements in, buildings or other structures,
1110 demolish improvements, raze existing or erect new party walls or buildings, subdivide or
1111 develop land, dedicate land to public use or grant public or private easements, and make or
1112 vacate plats and adjust boundaries;

- 1113 (i) enter into a lease for any purpose as lessor or lessee, including a lease or other
1114 arrangement for exploration and removal of natural resources, with or without the option to
1115 purchase or renew, for a period within or extending beyond the duration of the trust;
- 1116 (j) grant an option involving a sale, lease, or other disposition of trust property or
1117 acquire an option for the acquisition of property, including an option exercisable beyond the
1118 duration of the trust, and exercise an option so acquired;
- 1119 (k) insure the property of the trust against damage or loss and insure the trustee, the
1120 trustee's agents, and beneficiaries against liability arising from the administration of the trust;
- 1121 (l) abandon or decline to administer property of no value or of insufficient value to
1122 justify its collection or continued administration;
- 1123 (m) with respect to possible liability for violation of environmental law:
- 1124 (i) inspect or investigate property the trustee holds or has been asked to hold, or
1125 property owned or operated by an organization in which the trustee holds or has been asked to
1126 hold an interest, for the purpose of determining the application of environmental law with
1127 respect to the property;
- 1128 (ii) take action to prevent, abate, or otherwise remedy any actual or potential violation
1129 of any environmental law affecting property held directly or indirectly by the trustee, whether
1130 taken before or after the assertion of a claim or the initiation of governmental enforcement;
- 1131 (iii) decline to accept property into trust or disclaim any power with respect to property
1132 that is or may be burdened with liability for violation of environmental law;
- 1133 (iv) compromise claims against the trust which may be asserted for an alleged violation
1134 of environmental law; and
- 1135 (v) pay the expense of any inspection, review, abatement, or remedial action to comply
1136 with environmental law;
- 1137 (n) pay or contest any claim, settle a claim by or against the trust, and release, in whole
1138 or in part, a claim belonging to the trust;
- 1139 (o) pay taxes, assessments, compensation of the trustee and of employees and agents of
1140 the trust, and other expenses incurred in the administration of the trust;
- 1141 (p) exercise elections with respect to federal, state, and local taxes;
- 1142 (q) select a mode of payment under any employee benefit or retirement plan, annuity,
1143 or life insurance payable to the trustee, exercise rights thereunder, including exercise of the

- 1144 right to indemnification for expenses and against liabilities, and take appropriate action to
1145 collect the proceeds;
- 1146 (r) make loans out of trust property, including loans to a beneficiary on terms and
1147 conditions the trustee considers to be fair and reasonable under the circumstances, and the
1148 trustee has a lien on future distributions for repayment of those loans;
- 1149 (s) pledge trust property to guarantee loans made by others to the beneficiary;
- 1150 (t) appoint a trustee to act in another jurisdiction with respect to trust property located
1151 in the other jurisdiction, confer upon the appointed trustee all of the powers and duties of the
1152 appointing trustee, require that the appointed trustee furnish security, and remove any trustee so
1153 appointed;
- 1154 (u) pay an amount distributable to a beneficiary who is under a legal disability or who
1155 the trustee reasonably believes is incapacitated, by paying it directly to the beneficiary or
1156 applying it for the beneficiary's benefit, or by:
- 1157 (i) paying it to the beneficiary's conservator or, if the beneficiary does not have a
1158 conservator, the beneficiary's guardian;
- 1159 (ii) paying it to the beneficiary's custodian under [~~Title 75, Chapter 5a, Uniform~~
1160 ~~Transfers to Minors Act~~] Title 75A, Chapter 8, Uniform Transfers to Minors Act;
- 1161 (iii) if the trustee does not know of a conservator, guardian, custodian, or custodial
1162 trustee, paying it to an adult relative or other person having legal or physical care or custody of
1163 the beneficiary, to be expended on the beneficiary's behalf; or
- 1164 (iv) managing it as a separate fund on the beneficiary's behalf, subject to the
1165 beneficiary's continuing right to withdraw the distribution;
- 1166 (v) on distribution of trust property or the division or termination of a trust, make
1167 distributions in divided or undivided interests, allocate particular assets in proportionate or
1168 disproportionate shares, value the trust property for those purposes, and adjust for resulting
1169 differences in valuation;
- 1170 (w) resolve a dispute concerning the interpretation of the trust or its administration by
1171 mediation, arbitration, or other procedure for alternative dispute resolution;
- 1172 (x) prosecute or defend an action, claim, or judicial proceeding in any jurisdiction to
1173 protect trust property and the trustee in the performance of the trustee's duties;
- 1174 (y) sign and deliver contracts and other instruments that are useful to achieve or

1175 facilitate the exercise of the trustee's powers; and

1176 (z) on termination of the trust, exercise the powers appropriate to finalize the
1177 administration of the trust and distribute the trust property to the persons entitled to it.

1178 (2) A trustee may delegate investment and management functions that a prudent trustee
1179 of comparable skills could properly delegate under the circumstances.

1180 (a) The trustee shall exercise reasonable care, skill, and caution in:

1181 (i) selecting the agent;

1182 (ii) establishing the scope and terms of the delegation consistent with the purposes of
1183 the trust; and

1184 (iii) periodically reviewing the agent's actions to monitor the agent's performance and
1185 compliance with the terms of the delegation.

1186 (b) In performing a delegated function, an agent has a duty to the trust to exercise
1187 reasonable care to comply with the terms of the delegation.

1188 (c) A trustee who complies with the requirements of this Subsection (2) is not liable to
1189 the beneficiaries or to the trust for the decisions or actions of the agent to whom the function
1190 was delegated.

1191 (3) The trustee may exercise the powers set forth in this section and in the trust either
1192 in the name of the trust or in the name of the trustee as trustee, specifically including the right
1193 to take title, to encumber or convey assets, including real property, in the name of the trust.
1194 This Subsection (3) applies to a trustee's exercise of trust powers. After May 11, 2010, for
1195 recording purposes, the name of the trustee, the address of the trustee, and the name and date of
1196 the trust, shall be included on all recorded documents affecting real property to which the trust
1197 is a party in interest.

1198 Section 11. Section **75-7-816** is amended to read:

1199 **75-7-816. Recitals when title to real property is in trust -- Failure.**

1200 (1) When title to real property is granted to a person as trustee, the terms of the trust
1201 may be given either:

1202 (a) in the deed of transfer; or

1203 (b) in an instrument signed by the grantor and recorded in the same office as the grant
1204 to the trustee.

1205 (2) If the terms of the trust are not made public as required in Subsection (1), a

1206 conveyance from the trustee is absolute in favor of purchasers for value who take the property
1207 without notice of the terms of the trust.

1208 (3) The terms of the trust recited in the deed of transfer or the instrument recorded
1209 under Subsection (1)(b) shall include:

- 1210 (a) the name of the trustee;
- 1211 (b) the address of the trustee; and
- 1212 (c) the name and date of the trust.

1213 (4) Any real property titled in a trust which has a restriction on transfer described in

1214 Section ~~[25-6-502]~~ 75B-1-302 shall include in the title the words "asset protection trust."

1215 Section 12. Section **75A-1-101** is enacted to read:

1216 **TITLE 75A. FIDUCIARIES**
 1217 **CHAPTER 1. FIDUCIARIES**
 1218 **Part 1. General Provisions**

1219 **75A-1-101. Reserved for definitions.**

1220 Reserved.

1221 Section 13. Section **75A-1-102** is enacted to read:

1222 **75A-1-102. Transition clause.**

1223 If, at the time a power of attorney, a power of appointment, an advanced health care
 1224 directive, or another legal document was executed, the document contained a correct citation to
 1225 a provision in Title 22, Fiduciaries and Trusts, and Title 75, Utah Uniform Probate Code, that,
 1226 after the execution of the document, was renumbered and amended for inclusion in this title,
 1227 that citation is a valid citation to the same provision in this title.

1228 Section 14. Section **75A-1-201**, which is renumbered from Section 22-1-1 is
 1229 renumbered and amended to read:

1230 **Part 2. Payments and Deposits by Fiduciaries**

1231 ~~[22-1-1].~~ **75A-1-201. Definitions.**

1232 ~~[In this chapter unless the context or subject matter otherwise requires:]~~ As used in this
 1233 part:

1234 (1) "Fiduciary" ~~[includes]~~ means:

- 1235 (a) a trustee under any trust, expressed, implied, resulting or constructive~~[-];~~₂
- 1236 (b) an executor~~[-];~~₂

- 1237 (c) an administrator[;];
 1238 (d) a guardian[;];
 1239 (e) a conservator[;];
 1240 (f) a curator[;];
 1241 (g) a receiver[;];
 1242 (h) a trustee in bankruptcy[;];
 1243 (i) an assignee for the benefit of creditors[;];
 1244 (j) a partner[;];
 1245 (k) an agent[;];
 1246 (l) an officer of a corporation, public or private[;];
 1247 (m) a public officer[~~;~~and]; or
 1248 (n) any other person acting in a fiduciary capacity for any person, trust, or estate.
 1249 [~~"Principal" includes any person to whom a fiduciary as such owes an obligation.~~]
 1250 [~~A thing is done "in good faith" when it is in fact done honestly, whether it is done~~

1251 ~~negligently or not.]~~

1252 (2) "Good faith" means something is in fact done honestly regardless of whether it is
 1253 done negligently or not.

1254 (3) "Principal" means a person to whom a fiduciary owes an obligation.

1255 Section 15. Section **75A-1-202**, which is renumbered from Section 22-1-11 is
 1256 renumbered and amended to read:

1257 [~~22-1-11~~]. **75A-1-202. Transactions prior to May 12, 1925.**

1258 The provisions of this [~~chapter~~] part do not apply to transactions taking place prior to
 1259 May 12, 1925.

1260 Section 16. Section **75A-1-203**, which is renumbered from Section 22-1-2 is
 1261 renumbered and amended to read:

1262 [~~22-1-2~~]. **75A-1-203. Payments or transfers made to a fiduciary.**

1263 (1) A person who in good faith pays or transfers to a fiduciary any money or other
 1264 property [which] that the fiduciary [as such] is authorized to receive is not responsible for the
 1265 proper application [thereof] of the money or property by the fiduciary[;and no].

1266 (2) A right or title acquired from the fiduciary in consideration of [such] a payment or
 1267 transfer described in Subsection (1) is not invalid [in] as a consequence of a misapplication by

1268 the fiduciary.

1269 Section 17. Section **75A-1-204**, which is renumbered from Section 22-1-4 is
1270 renumbered and amended to read:

1271 ~~[22-1-4].~~ **75A-1-204. Transfer of negotiable instruments by a fiduciary.**

1272 ~~[If any negotiable instrument payable or indorsed to a fiduciary as such is endorsed by~~
1273 ~~the fiduciary, or if any negotiable instrument payable or endorsed to his principal is endorsed~~
1274 ~~by a fiduciary empowered to endorse such instrument on behalf of his principal, the indorsee is~~
1275 ~~not bound to inquire whether the fiduciary is committing a breach of his obligation as fiduciary~~
1276 ~~in endorsing or delivering the instrument, and is not chargeable with notice that the fiduciary is~~
1277 ~~committing a breach of his obligation as fiduciary, unless he takes the instrument with actual~~
1278 ~~knowledge of such breach or with knowledge of such facts that his action in taking the~~
1279 ~~instrument amounts to bad faith. If, however, such instrument is transferred by the fiduciary in~~
1280 ~~payment of, or as security for, a personal debt of the fiduciary to the actual knowledge of the~~
1281 ~~creditor, or is transferred in any transaction known by the transferee to be for the personal~~
1282 ~~benefit of the fiduciary, the creditor or other transferee is liable to the principal, if the fiduciary~~
1283 ~~in fact commits a breach of his obligation as fiduciary in transferring the instrument].~~

1284 (1) If a fiduciary endorses a negotiable instrument that is payable or endorsed to the
1285 fiduciary or the fiduciary's principal, and the fiduciary has authority to endorse the negotiable
1286 instrument on behalf of the principal, the person that receives the negotiable instrument
1287 through the endorsement:

1288 (a) is not bound to inquire as to whether the fiduciary is committing a breach of the
1289 fiduciary's obligation in endorsing or delivering the negotiable instrument; and

1290 (b) is not required to provide notice that the fiduciary is committing a breach of the
1291 fiduciary's obligation, unless the person:

1292 (i) takes the negotiable instrument with actual knowledge that the fiduciary is
1293 committing a breach of the fiduciary's obligation; or

1294 (ii) knows that taking the negotiable instrument amounts to bad faith.

1295 (2) Notwithstanding Subsection (1), a person is liable to a principal if:

1296 (a) the fiduciary transfers a negotiable instrument to the person and the person knows
1297 that the fiduciary is transferring the negotiable instrument:

1298 (i) as payment of, or as a security for, a personal debt of the fiduciary; or

1299 (ii) for the personal benefit of the fiduciary; and
1300 (b) the fiduciary commits a breach of the fiduciary's obligation in transferring the
1301 negotiable instrument to the person.

1302 Section 18. Section **75A-1-205**, which is renumbered from Section 22-1-5 is
1303 renumbered and amended to read:

1304 **[~~22-1-5~~. 75A-1-205. Checks -- Drawn by a fiduciary and payable to a third**
1305 **person.**

1306 ~~[If a check or other bill of exchange is drawn by a fiduciary as such, or in the name of~~
1307 ~~his principal by a fiduciary empowered to draw such instrument in the name of his principal;~~
1308 ~~the payee is not bound to inquire whether the fiduciary is committing a breach of his obligation~~
1309 ~~as fiduciary in drawing or delivering the instrument, and is not chargeable with notice that the~~
1310 ~~fiduciary is committing a breach of his obligation as fiduciary, unless he takes the instrument~~
1311 ~~with actual knowledge of such breach or with knowledge of such facts that his action in taking~~
1312 ~~the instrument amounts to bad faith. If, however, such instrument is payable to a personal~~
1313 ~~creditor of the fiduciary and delivered to the creditor in payment of, or as security for, a~~
1314 ~~personal debt of the fiduciary to the actual knowledge of the creditor, or is drawn and delivered~~
1315 ~~in any transaction known by the payee to be for the personal benefit of the fiduciary, the~~
1316 ~~creditor or other payee is liable to the principal, if the fiduciary in fact commits a breach of his~~
1317 ~~obligation as fiduciary in drawing or delivering the instrument.]~~

1318 (1) If a fiduciary draws a check or other bill of exchange in the name of the fiduciary's
1319 principal and the fiduciary has authority to draw the check or other bill of exchange in the name
1320 of the principal, the person to which the check or other bill of exchange is paid:

1321 (a) is not bound to inquire as to whether the fiduciary is committing a breach of the
1322 fiduciary's obligation in drawing the check or other bill of exchange; and

1323 (b) is not required to provide notice that the fiduciary is committing a breach of the
1324 fiduciary's obligation, unless the person:

1325 (i) takes the check or other bill of exchange with actual knowledge that the fiduciary is
1326 committing a breach of the fiduciary's obligation; or

1327 (ii) knows that taking the check or other bill of exchange amounts to bad faith.

1328 (2) Notwithstanding Subsection (1), a person is liable to a principal if:

1329 (a) the fiduciary writes and delivers the check or other bill of exchange to the person;

1330 (b) the person knows that the fiduciary is drawing and delivering the check or other bill
1331 of exchange for:

1332 (i) payment of, or as a security for, a personal debt of the fiduciary; or

1333 (ii) the personal benefit of the fiduciary; and

1334 (c) the fiduciary commits a breach of the fiduciary's obligation in drawing or delivering
1335 the check or other bill of exchange to the person.

1336 Section 19. Section **75A-1-206**, which is renumbered from Section 22-1-6 is
1337 renumbered and amended to read:

1338 **[~~22-1-6~~. 75A-1-206. Checks drawn by or payable to a fiduciary.**

1339 ~~[If a check or other bill of exchange is drawn by a fiduciary as such, or in the name of~~
1340 ~~his principal by a fiduciary empowered to draw such instrument in the name of his principal,~~
1341 ~~payable to the fiduciary personally, or payable to a third person and by him transferred to the~~
1342 ~~fiduciary, and is thereafter transferred by the fiduciary, whether in payment of a personal debt~~
1343 ~~of the fiduciary or otherwise, the transferee is not bound to inquire whether the fiduciary is~~
1344 ~~committing a breach of his obligation as fiduciary in transferring the instrument, and is not~~
1345 ~~chargeable with notice that the fiduciary is committing a breach of his obligation as fiduciary,~~
1346 ~~unless he takes the instrument with actual knowledge of such breach or with knowledge of such~~
1347 ~~facts that his action in taking the instrument amounts to bad faith.] If a fiduciary draws a check
1348 or other bill of exchange in the name of the fiduciary's principal and the fiduciary has authority
1349 to draw the check or other bill of exchange that is payable to the fiduciary or a person that
1350 transfers the payment to the fiduciary, the person to which the check or other bill of exchange
1351 is paid:~~

1352 (1) is not bound to inquire as to whether the fiduciary is committing a breach of the
1353 fiduciary's obligation in transferring the check or other bill of exchange to the fiduciary; and

1354 (2) is not required to provide notice that the fiduciary is committing a breach of the
1355 fiduciary's obligation, unless the person:

1356 (a) takes the check or other bill of exchange with actual knowledge that the fiduciary is
1357 committing a breach of the fiduciary's obligation; or

1358 (b) knows that taking the check or other bill of exchange amounts to bad faith.

1359 Section 20. Section **75A-1-207**, which is renumbered from Section 22-1-7 is
1360 renumbered and amended to read:

1361 ~~[22-1-7].~~ 75A-1-207. Bank deposits in the name of a fiduciary.

1362 ~~[If a deposit is made in a bank to the credit of a fiduciary as such, the bank is authorized~~
1363 ~~to pay the amount of the deposit or any part thereof upon the check of the fiduciary, signed~~
1364 ~~with the name in which such deposit is entered, without being liable to the principal, unless the~~
1365 ~~bank pays the check with actual knowledge that the fiduciary is committing a breach of his~~
1366 ~~obligation as fiduciary in drawing the check, or with knowledge of such facts that its action in~~
1367 ~~paying the check amounts to bad faith. If, however, such a check is payable to the drawee bank~~
1368 ~~and is delivered to it in payment of, or as security for, a personal debt of the fiduciary to it, the~~
1369 ~~bank is liable to the principal, if the fiduciary in fact commits a breach of his obligation as~~
1370 ~~fiduciary in drawing or delivering the check.]~~

1371 (1) If a fiduciary deposits a check in a bank in the name of the fiduciary's principal and
1372 to the credit of the fiduciary and the bank is authorized to pay the amount of the deposit or any
1373 part of the deposit, the bank is not liable to the principal unless:

1374 (a) the bank pays the check with actual knowledge that the fiduciary is committing a
1375 breach of the fiduciary's obligation in drawing the check; or

1376 (b) the bank knows that paying the check amounts to bad faith.

1377 (2) Notwithstanding Subsection (1), a bank is liable to a principal if:

1378 (a) the fiduciary deposits a check in the name of the principal as payment to the bank
1379 for payment of, or as security for, a personal debt of the fiduciary; and

1380 (b) the fiduciary commits a breach of the fiduciary's obligation in drawing or delivering
1381 the check to the bank.

1382 Section 21. Section **75A-1-208**, which is renumbered from Section 22-1-8 is
1383 renumbered and amended to read:

1384 ~~[22-1-8].~~ 75A-1-208. Checks drawn in name of a principal.

1385 ~~[If a check is drawn upon the account of his principal in a bank by a fiduciary who is~~
1386 ~~empowered to draw checks upon his principal's account, the bank is authorized to pay such~~
1387 ~~check without being liable to the principal, unless the bank pays the check with actual~~
1388 ~~knowledge that the fiduciary is committing a breach of his obligation as fiduciary in drawing~~
1389 ~~such check, or with knowledge of such facts that its action in paying the check amounts to bad~~
1390 ~~faith. If, however, such a check is payable to the drawee bank and is delivered to it in payment~~
1391 ~~of, or as security for, a personal debt of the fiduciary to it, the bank is liable to the principal, if~~

1392 the fiduciary in fact commits a breach of his obligation as fiduciary in drawing or delivering the
1393 check.]

1394 (1) If a fiduciary draws a check upon the account of the fiduciary's principal in a bank
1395 that is authorized to draw checks upon the principal's account and the bank is authorized to pay
1396 the check, the bank is not liable to the principal unless:

1397 (a) the bank pays the check with actual knowledge that the fiduciary is committing a
1398 breach of the fiduciary's obligation in drawing the check; or

1399 (b) the bank knows that paying the check amounts to bad faith.

1400 (2) Notwithstanding Subsection (1), the bank is liable to a principal if:

1401 (a) the principal's fiduciary deposits a check in the name of the principal as payment to
1402 the bank for payment of, or as security for, a personal debt of the fiduciary; and

1403 (b) the fiduciary commits a breach of the fiduciary's obligation in drawing or delivering
1404 the check to the bank.

1405 Section 22. Section **75A-1-209**, which is renumbered from Section 22-1-9 is
1406 renumbered and amended to read:

1407 **[~~22-1-9~~]. 75A-1-209. Deposits in a fiduciary's personal account.**

1408 [If a fiduciary makes a deposit in a bank to his personal credit of checks drawn by him
1409 upon an account in his own name as fiduciary, or of checks payable to him as fiduciary, or of
1410 checks drawn by him upon an account in the name of his principal, if he is empowered to draw
1411 checks thereon, or of checks payable to his principal and indorsed by him, if he is empowered
1412 to indorse such checks, or if he otherwise makes a deposit of funds held by him as fiduciary,
1413 the bank receiving such deposit is not bound to inquire whether the fiduciary is committing
1414 thereby a breach of his obligation as fiduciary; and the bank is authorized to pay the amount of
1415 the deposit or any part thereof upon the personal check of the fiduciary without being liable to
1416 the principal, unless the bank receives the deposit or pays the check with actual knowledge that
1417 the fiduciary is committing a breach of his obligation as fiduciary in making such deposit or in
1418 drawing such check, or with knowledge of such facts that its action in receiving the deposit or
1419 paying the check amounts to bad faith.] If a principal authorizes a fiduciary to write or endorse
1420 a check for the principal, and the fiduciary writes a check payable to the fiduciary and deposits
1421 the check in a bank into the fiduciary's personal account:

1422 (1) the bank is not bound to inquire whether a fiduciary is committing a breach of the

1423 fiduciary's obligation to a principal; and

1424 (2) the bank is authorized to pay the amount of the deposit or any part of a personal
 1425 check of the fiduciary without being liable to the principal unless:

1426 (a) the bank deposits the check for a fiduciary with actual knowledge that the fiduciary
 1427 is committing a breach of the fiduciary's obligation in depositing the check; or

1428 (b) the bank knows that depositing the check for the fiduciary amounts to bad faith.

1429 Section 23. Section **75A-1-210**, which is renumbered from Section 22-1-10 is
 1430 renumbered and amended to read:

1431 **[22-1-10]. 75A-1-210. Deposits in name of several trustees.**

1432 When a deposit is made in a bank in the name of two or more persons as trustees and a
 1433 check is drawn upon the trust account by ~~[any trustee or trustees]~~ a trustee authorized by ~~[the~~
 1434 ~~other trustee or trustees]~~ another trustee to draw checks upon the trust account~~[, neither the~~
 1435 ~~payee nor other holder nor the bank is]~~:

1436 (1) the payee or bank is not bound to inquire whether [it] the deposit is a breach of trust
 1437 to authorize [such trustee or trustees] a trustee to draw checks upon the trust account[,-and];
 1438 and

1439 (2) the payee or bank is not liable[,-] unless the circumstances are such that the action of
 1440 the [payee or other holder or the bank] payee or bank amounts to bad faith.

1441 Section 24. Section **75A-2-101**, which is renumbered from Section 75-9-102 is
 1442 renumbered and amended to read:

1443 **CHAPTER 2. UNIFORM POWER OF ATTORNEY ACT**

1444 **Part 1. General Provisions**

1445 **[75-9-102]. 75A-2-101. Definitions.**

1446 [It] As used in this chapter:

1447 (1) (a) "Agent" means a person granted authority to act for a principal under a power of
 1448 attorney, whether denominated an agent, attorney-in-fact, or otherwise. ~~[The term]~~

1449 (b) "Agent" includes an original agent, coagent, successor agent, and person to which
 1450 an agent's authority is delegated.

1451 (2) "Beneficiary" means the same as that term is defined in Section 75-1-201.

1452 (3) "Beneficiary designation" means the same as that term is defined in Section
 1453 75-1-201.

- 1454 (4) "Claims" means the same as that term is defined in Section 75-1-201.
- 1455 (5) "Conservator" means the same as that term is defined in Section 75-1-201.
- 1456 (6) "Descendant" means the same as that term is defined in Section 75-1-201.
- 1457 ~~(2)~~ (7) "Durable," with respect to a power of attorney, means not terminated by the
- 1458 principal's incapacity.
- 1459 ~~(3)~~ (8) "Electronic" means relating to technology having electrical, digital, magnetic,
- 1460 wireless, optical, electromagnetic, or similar capabilities.
- 1461 (9) "Estate" means the same as that term is defined in Section 75-1-201.
- 1462 (10) "Fiduciary" means the same as that term is defined in Section 75-1-201.
- 1463 ~~(4)~~ (11) "Good faith" means honesty in fact.
- 1464 (12) "Guardian" means the same as that term is defined in Section 75-1-201.
- 1465 ~~(5)~~ (13) "Incapacity" means the inability of an individual to manage property or
- 1466 business affairs because the individual:
- 1467 (a) has an impairment in the ability to receive and evaluate information or make or
- 1468 communicate decisions even with the use of technological assistance; or
- 1469 (b) is:
- 1470 (i) missing;
- 1471 (ii) detained, including incarcerated in a penal system; or
- 1472 (iii) outside the United States and unable to return.
- 1473 (14) "Interested person" means the same as that term is defined in Section 75-1-201.
- 1474 (15) "Lease" means the same as that term is defined in Section 75-1-201.
- 1475 (16) "Mortgage" means the same as that term is defined in Section 75-1-201.
- 1476 (17) "Organization" means the same as that term is defined in Section 75-1-201.
- 1477 ~~(6)~~ (18) "Person" means an individual, corporation, business trust, estate, trust,
- 1478 partnership, limited liability company, association, joint venture, public corporation,
- 1479 government or governmental subdivision, agency, or instrumentality, or any other legal or
- 1480 commercial entity.
- 1481 (19) "Personal representative" means the same as that term is defined in Section
- 1482 75-1-201.
- 1483 ~~(7)~~ (20) "Power of attorney" means a writing or other record that grants authority to
- 1484 an agent to act in the place of the principal, whether or not the term power of attorney is used.

1485 ~~[(8)]~~ (21) (a) "Presently exercisable general power of appointment," with respect to
1486 property or a property interest subject to a power of appointment, means power exercisable at
1487 the time in question to vest absolute ownership in the principal individually, the principal's
1488 estate, the principal's creditors, or the creditors of the principal's estate. ~~[The term]~~

1489 (b) "Presently exercisable general power of appointment" includes a power of
1490 appointment not exercisable until the occurrence of a specified event, the satisfaction of an
1491 ascertainable standard, or the passage of a specified period only after the occurrence of the
1492 specified event, the satisfaction of the ascertainable standard, or the passage of the specified
1493 period. ~~[The term]~~

1494 (c) "Presently exercisable general power of appointment" does not include a power
1495 exercisable in a fiduciary capacity or only by will.

1496 ~~[(9)]~~ (22) "Principal" means an individual who grants authority to an agent in a power
1497 of attorney.

1498 ~~[(10)]~~ (23) "Property" means anything that may be the subject of ownership, whether
1499 real or personal, or legal or equitable, or any interest or right therein.

1500 (24) "Protective Proceeding" means the same as that term is defined in Section
1501 [75-1-201](#).

1502 ~~[(11)]~~ (25) "Record" means information that is inscribed on a tangible medium or that
1503 is stored in an electronic or other medium and is retrievable in perceivable form.

1504 (26) "Security" means the same as that term is defined in Section [75-1-201](#).

1505 ~~[(12)]~~ (27) "Sign" means, with present intent to authenticate or adopt a record:

1506 (a) to execute or adopt a tangible symbol; or

1507 (b) to attach to or logically associate with the record an electronic sound, symbol, or
1508 process.

1509 ~~[(13)]~~ (28) "State" means a state of the United States, the District of Columbia, Puerto
1510 Rico, the United States Virgin Islands, or any territory or insular possession subject to the
1511 jurisdiction of the United States.

1512 ~~[(14)]~~ (29) (a) "Stocks and bonds" means stocks, bonds, mutual funds, and all other
1513 types of securities and financial instruments, whether held directly, indirectly, or in any other
1514 manner. ~~[The term]~~

1515 (b) "Stocks and bonds" does not include commodity futures contracts and call or put

1516 options on stocks or stock indexes.

1517 (30) "Trust" means the same as that term is defined in Section [75-1-201](#).

1518 (31) "Trustee" means the same as that term is defined in Section [75-1-201](#).

1519 (32) "Will" means the same as that term is defined in Section [75-1-201](#).

1520 Section 25. Section **75A-2-102**, which is renumbered from Section 75-9-103 is
1521 renumbered and amended to read:

1522 ~~[75-9-103]~~. **75A-2-102**. **Applicability.**

1523 This chapter applies to all powers of attorney except:

1524 (1) a power to the extent it is coupled with an interest in the subject of the power,
1525 including a power given to or for the benefit of a creditor in connection with a credit
1526 transaction;

1527 (2) a power to make health care decisions;

1528 (3) a proxy or other delegation to exercise voting rights or management rights with
1529 respect to an entity; and

1530 (4) a power created on a form prescribed by a government or governmental
1531 subdivision, agency, or instrumentality for a governmental purpose.

1532 Section 26. Section **75A-2-103**, which is renumbered from Section 75-9-104 is
1533 renumbered and amended to read:

1534 ~~[75-9-104]~~. **75A-2-103**. **Power of attorney is durable.**

1535 A power of attorney created under this chapter is durable unless it expressly provides
1536 that it is terminated by the incapacity of the principal.

1537 Section 27. Section **75A-2-104**, which is renumbered from Section 75-9-105 is
1538 renumbered and amended to read:

1539 ~~[75-9-105]~~. **75A-2-104**. **Execution of power of attorney.**

1540 (1) (a) A power of attorney shall be signed by the principal or in the principal's
1541 conscious presence by another individual directed by the principal to sign the principal's name
1542 on the power of attorney before a notary public or other individual authorized by the law to
1543 take acknowledgments.

1544 (b) A signature on a power of attorney is presumed to be genuine if the principal
1545 acknowledges the signature before a notary public or other individual authorized by law to take
1546 acknowledgments.

1547 (2) If the principal resides or is about to reside in a hospital, assisted living, skilled
1548 nursing, or similar facility, at the time of execution of the power of attorney, the principal may
1549 not name any agent that is the owner, operator, health care provider, or employee of the
1550 hospital, assisted living facility, skilled nursing, or similar residential care facility unless:

1551 (a) the agent is the spouse, legal guardian, or next of kin of the principal~~[-or-unless]; or~~
1552 (b) the agent's authority is strictly limited to the purpose of assisting the principal to
1553 establish eligibility for Medicaid.

1554 (3) A violation of Subsection (2) is a violation of Section [76-5-111.4](#).

1555 Section 28. Section **75A-2-105**, which is renumbered from Section 75-9-106 is
1556 renumbered and amended to read:

1557 ~~[75-9-106]~~. **75A-2-105. Validity of power of attorney.**

1558 (1) A power of attorney executed in this state on or after May 10, 2016, is valid if its
1559 execution complies with Section ~~[75-9-105]~~ [75A-2-104](#).

1560 (2) A power of attorney executed in this state before May 10, 2016, is valid if its
1561 execution complied with the law of this state as it existed at the time of execution.

1562 (3) A power of attorney executed other than in this state is valid in this state if, when
1563 the power of attorney was executed, the execution complied with:

1564 (a) the law of the jurisdiction that determines the meaning and effect of the power of
1565 attorney pursuant to Section ~~[75-9-107]~~ [75A-2-106](#); or

1566 (b) the requirements for a military power of attorney pursuant to 10 U.S.C. Sec. 1044b.

1567 (4) Except as otherwise provided by statute other than this chapter, a photocopy or
1568 electronically transmitted copy of an original power of attorney has the same effect as the
1569 original. For transactions involving real property, the copy of the power of attorney may be
1570 recorded in the county where the transaction lies when attached to an affidavit of the person
1571 accepting the power of attorney.

1572 Section 29. Section **75A-2-106**, which is renumbered from Section 75-9-107 is
1573 renumbered and amended to read:

1574 ~~[75-9-107]~~. **75A-2-106. Meaning and effect of power of attorney.**

1575 The meaning and effect of a power of attorney is determined by the law of the
1576 jurisdiction indicated in the power of attorney and, in the absence of an indication of
1577 jurisdiction, by the law of the jurisdiction in which the power of attorney was executed.

1578 Section 30. Section **75A-2-107**, which is renumbered from Section 75-9-108 is
1579 renumbered and amended to read:

1580 ~~[75-9-108]~~. **75A-2-107**. **Nomination of conservator or guardian -- Adequacy of**
1581 **power of attorney -- Relation of agent to conservator or other fiduciary.**

1582 (1) In a power of attorney, a principal may nominate a conservator of the principal's
1583 estate or a guardian of the principal's person for consideration by the court if protective
1584 proceedings for the principal's estate or person are begun after the principal executes the power
1585 of attorney.

1586 (2) If a principal executes a power of attorney and a petition is filed to appoint a
1587 conservator of the principal's estate, the court shall consider whether:

1588 (a) the provisions in the power of attorney are adequate to manage and protect the
1589 principal's estate without appointing a conservator; or

1590 (b) the appointment of a conservator is necessary to manage and protect the principal's
1591 estate.

1592 (3) If the court appoints a conservator of the principal's estate or a guardian of the
1593 principal's person, the court shall appoint a conservator or a guardian in accordance with the
1594 principal's most recent nomination unless there is good cause shown or disqualification.

1595 (4) If, after a principal executes a power of attorney, the court determines that an
1596 appointment of a conservator or other fiduciary is necessary to manage and protect some or all
1597 of the principal's estate:

1598 (a) the agent named in the principal's power of attorney is accountable to the
1599 conservator or other fiduciary as well as the principal; and

1600 (b) the power of attorney is not terminated and the agent's authority continues unless
1601 limited, suspended, or terminated by the court.

1602 Section 31. Section **75A-2-108**, which is renumbered from Section 75-9-109 is
1603 renumbered and amended to read:

1604 ~~[75-9-109]~~. **75A-2-108**. **When power of attorney is effective.**

1605 (1) A power of attorney is effective when executed unless the principal provides in the
1606 power of attorney that it becomes effective at a future date or upon the occurrence of a future
1607 event or contingency.

1608 (2) If a power of attorney becomes effective upon the occurrence of a future event or

1609 contingency, the principal, in the power of attorney, may authorize one or more persons to
1610 determine in a writing or other record that the event or contingency has occurred.

1611 (3) If a power of attorney becomes effective upon the principal's incapacity and the
1612 principal has not authorized a person to determine whether the principal is incapacitated, or the
1613 person authorized is unable or unwilling to make the determination, the power of attorney
1614 becomes effective upon a determination in a writing or other record by:

1615 (a) a physician that the principal is incapacitated within the meaning of Subsection
1616 [~~75-9-102(5)(a)~~] [75A-2-101\(13\)\(a\)](#); or

1617 (b) an attorney at law, a judge, or an appropriate governmental official that the
1618 principal is incapacitated within the meaning of Subsection [~~75-9-102(5)(b)~~]
1619 [75A-2-101\(13\)\(b\)](#).

1620 (4) A person authorized by the principal in the power of attorney to determine that the
1621 principal is incapacitated may act as the principal's personal representative pursuant to the
1622 Health Insurance Portability and Accountability Act, Sections 1171 through 1179 of the Social
1623 Security Act, 42 U.S.C. Sec. 1320d, and applicable regulations, to obtain access to the
1624 principal's health care information and communicate with the principal's health care provider.

1625 Section 32. Section **75A-2-109**, which is renumbered from Section 75-9-110 is
1626 renumbered and amended to read:

1627 [~~75-9-110~~]. **75A-2-109. Termination of power of attorney or agent's authority.**

1628 (1) A power of attorney terminates when:

1629 (a) the principal dies;

1630 (b) the principal becomes incapacitated, if the power of attorney is not durable;

1631 (c) the principal revokes the power of attorney;

1632 (d) the power of attorney provides that it terminates;

1633 (e) the purpose of the power of attorney is accomplished; or

1634 (f) the principal revokes the agent's authority or the agent dies, becomes incapacitated,
1635 or resigns, and the power of attorney does not provide for another agent to act under the power
1636 of attorney.

1637 (2) An agent's authority terminates when:

1638 (a) the principal revokes the authority;

1639 (b) the agent dies, becomes incapacitated, or resigns;

1640 (c) an action is filed for the dissolution or annulment of the agent's marriage to the
1641 principal or their legal separation, unless the power of attorney otherwise provides; or

1642 (d) the power of attorney terminates.

1643 (3) Unless the power of attorney otherwise provides, an agent's authority is exercisable
1644 until the authority terminates under Subsection (2), notwithstanding a lapse of time since the
1645 execution of the power of attorney.

1646 (4) (a) Termination of an agent's authority or of a power of attorney is not effective as
1647 to the agent or another person that, without actual knowledge of the termination, acts in good
1648 faith under the power of attorney.

1649 (b) An act so performed, unless otherwise invalid or unenforceable, binds the principal
1650 and the principal's successors in interest.

1651 (5) (a) Incapacity of the principal of a power of attorney that is not durable does not
1652 revoke or terminate the power of attorney as to an agent or other person that, without actual
1653 knowledge of the incapacity, acts in good faith under the power of attorney.

1654 (b) An act so performed, unless otherwise invalid or unenforceable, binds the principal
1655 and the principal's successors in interest.

1656 (6) The execution of a power of attorney does not revoke a power of attorney
1657 previously executed by the principal unless the subsequent power of attorney provides that the
1658 previous power of attorney is revoked or that all other powers of attorney are revoked.

1659 (7) The principal may revoke or amend a power of attorney:

1660 (a) by substantial compliance with a method provided in the terms of the power of
1661 attorney that expressly excludes all other methods for amending or revoking the power of
1662 attorney; or

1663 (b) if the terms of the power of attorney do not provide a method or the method
1664 provided in the terms is not expressly made exclusive, by any other method manifesting clear
1665 and convincing evidence of the principal's intent.

1666 Section 33. Section **75A-2-110**, which is renumbered from Section 75-9-111 is
1667 renumbered and amended to read:

1668 ~~[75-9-111]~~. **75A-2-110. Coagents and successor agents.**

1669 (1) (a) A principal may designate two or more persons to act as coagents.

1670 (b) Unless the power of attorney otherwise provides, each coagent may exercise its

1671 authority independently.

1672 (2) (a) A principal may designate one or more successor agents to act if an agent
1673 resigns, dies, becomes incapacitated, is not qualified to serve, or declines to serve.

1674 (b) A principal may grant authority to designate one or more successor agents to an
1675 agent or other person designated by name, office, or function.

1676 (c) Unless the power of attorney otherwise provides, a successor agent:

1677 ~~(a)~~ (i) has the same authority as that granted to the original agent; and

1678 ~~(b)~~ (ii) may not act until all predecessor agents have resigned, died, become
1679 incapacitated, are no longer qualified to serve, or have declined to serve.

1680 (3) Except as otherwise provided in the power of attorney and Subsection (4), an agent
1681 that does not participate in or conceal a breach of fiduciary duty committed by another agent,
1682 including a predecessor agent, is not liable for the actions of the other agent.

1683 (4) (a) An agent that has accepted appointment and that has actual knowledge of a
1684 breach or imminent breach of fiduciary duty by another agent shall notify the principal and, if
1685 the principal is incapacitated, take any action reasonably appropriate in the circumstances to
1686 safeguard the principal's best interest.

1687 (b) An agent that fails to notify the principal or take action as required by this
1688 subsection is liable for the reasonably foreseeable damages that could have been avoided if the
1689 agent had notified the principal or taken action.

1690 Section 34. Section **75A-2-111**, which is renumbered from Section 75-9-112 is
1691 renumbered and amended to read:

1692 ~~[75-9-112]~~. **75A-2-111. Reimbursement and compensation of agent.**

1693 Unless the power of attorney otherwise provides, an agent is entitled to reimbursement
1694 of expenses reasonably incurred on behalf of the principal and to compensation that is
1695 reasonable under the circumstances.

1696 Section 35. Section **75A-2-112**, which is renumbered from Section 75-9-113 is
1697 renumbered and amended to read:

1698 ~~[75-9-113]~~. **75A-2-112. Agent's acceptance.**

1699 Except as otherwise provided in the power of attorney, a person accepts appointment as
1700 an agent under a power of attorney by exercising authority or performing duties as an agent or
1701 by any other assertion or conduct indicating acceptance.

1702 Section 36. Section **75A-2-113**, which is renumbered from Section 75-9-114 is
1703 renumbered and amended to read:

1704 ~~[75-9-114]~~. **75A-2-113**. **Agent's duties.**

1705 (1) Notwithstanding provisions in the power of attorney, an agent that has accepted
1706 appointment shall:

1707 (a) act in accordance with the principal's reasonable expectations to the extent actually
1708 known by the agent and, otherwise, in the principal's best interest;

1709 (b) act in good faith;

1710 (c) act only within the scope of authority granted in the power of attorney; and

1711 (d) comply with the terms of the power of attorney.

1712 (2) (a) Except as otherwise provided in the power of attorney or other provision of this
1713 chapter, an agent that has accepted appointment shall have no further obligation to act under
1714 the power of attorney.

1715 (b) However, with respect to any action taken by the agent under the power of attorney,
1716 the agent shall:

1717 ~~[(a)]~~ (i) act loyally for the principal's benefit;

1718 ~~[(b)]~~ (ii) act so as not to create a conflict of interest that impairs the agent's ability to
1719 act impartially in the principal's best interest;

1720 ~~[(c)]~~ (iii) act with the care, competence, and diligence ordinarily exercised by agents in
1721 similar circumstances;

1722 ~~[(d)]~~ (iv) keep a record of all receipts, disbursements, and transactions made on behalf
1723 of the principal;

1724 ~~[(e)]~~ (v) cooperate with a person that has authority to make health care decisions for
1725 the principal to carry out the principal's reasonable expectations to the extent actually known by
1726 the agent and, otherwise, act in the principal's best interest; and

1727 ~~[(f)]~~ (vi) attempt to preserve the principal's estate plan, to the extent actually known by
1728 the agent, if preserving the plan is consistent with the principal's best interest based on all
1729 relevant factors, including:

1730 ~~[(i)]~~ (A) the value and nature of the principal's property;

1731 ~~[(ii)]~~ (B) the principal's foreseeable obligations and need for maintenance;

1732 ~~[(iii)]~~ (C) minimization of taxes, including income, estate, inheritance,

1733 generation-skipping transfer, and gift taxes; and

1734 ~~[(iv)]~~ (D) eligibility for a benefit, a program, or assistance under a statute, rule, or
1735 regulation.

1736 (3) An agent that acts in good faith is not liable to any beneficiary of the principal's
1737 estate plan for failure to preserve the plan.

1738 (4) An agent that acts with care, competence, and diligence for the best interest of the
1739 principal is not liable solely because the agent also benefits from the act or has an individual or
1740 conflicting interest in relation to the property or affairs of the principal.

1741 (5) If an agent is selected by the principal because of special skills or expertise
1742 possessed by the agent or in reliance on the agent's representation that the agent has special
1743 skills or expertise, the special skills or expertise shall be considered in determining whether the
1744 agent has acted with care, competence, and diligence under the circumstances.

1745 (6) Absent a breach of duty to the principal, an agent is not liable if the value of the
1746 principal's property declines.

1747 (7) An agent that exercises authority to delegate to another person the authority granted
1748 by the principal or that engages another person on behalf of the principal is not liable for an act,
1749 error of judgment, or default of that person if the agent exercises care, competence, and
1750 diligence in selecting and monitoring the person.

1751 (8) (a) Except as otherwise provided in the power of attorney, an agent is not required
1752 to disclose receipts, disbursements, or transactions conducted on behalf of the principal unless
1753 ordered by a court or requested by the principal, a guardian, a conservator, another fiduciary
1754 acting for the principal, a governmental agency having authority to protect the welfare of the
1755 principal, an interested person [~~as defined in Subsection 75-1-201(24)~~] after the principal's
1756 incapacity, or upon the death of the principal, by the personal representative or successor in
1757 interest of the principal's estate.

1758 (b) If so requested, within 30 days the agent shall comply with the request or provide a
1759 writing or other record substantiating why additional time is needed and shall comply with the
1760 request within an additional 30 days.

1761 Section 37. Section **75A-2-114**, which is renumbered from Section 75-9-115 is
1762 renumbered and amended to read:

1763 ~~[75-9-115]~~. **75A-2-114. Exoneration of agent.**

1764 A provision in a power of attorney relieving an agent of liability for breach of duty is
1765 binding on the principal and the principal's successors in interest except to the extent the
1766 provision:

1767 (1) relieves the agent of liability for breach of duty committed dishonestly, with an
1768 improper motive, or with reckless indifference to the purposes of the power of attorney or the
1769 best interest of the principal; or

1770 (2) was inserted as a result of an abuse of a confidential or fiduciary relationship with
1771 the principal.

1772 Section 38. Section **75A-2-115**, which is renumbered from Section 75-9-116 is
1773 renumbered and amended to read:

1774 ~~[75-9-116]~~. **75A-2-115. Judicial relief.**

1775 (1) The following persons may petition a court to construe a power of attorney or
1776 review the agent's conduct and grant appropriate relief:

1777 (a) the principal or the agent;

1778 (b) a guardian, conservator, or other fiduciary acting for the principal;

1779 (c) a person authorized to make health care decisions for the principal;

1780 (d) the principal's spouse, parent, or descendant;

1781 (e) an individual who would qualify as a presumptive heir of the principal;

1782 (f) a person named as a beneficiary to receive any property, benefit, or contractual right
1783 on the principal's death or as a beneficiary of a trust created by or for the principal that has a
1784 financial interest in the principal's estate;

1785 (g) a governmental agency having regulatory authority to protect the welfare of the
1786 principal;

1787 (h) the principal's caregiver or another person that demonstrates sufficient interest in
1788 the principal's welfare; and

1789 (i) a person asked to accept the power of attorney.

1790 (2) Upon motion by the principal, the court shall dismiss a petition filed under this
1791 section, unless the court finds that the principal lacks capacity to revoke the agent's authority or
1792 the power of attorney.

1793 Section 39. Section **75A-2-116**, which is renumbered from Section 75-9-117 is
1794 renumbered and amended to read:

1795 **[75-9-117]. 75A-2-116. Agent's liability.**

1796 An agent that violates this chapter is liable to the principal or the principal's successors
1797 in interest for the amount required to:

1798 (1) restore the value of the principal's property to what it would have been had the
1799 violation not occurred; and

1800 (2) reimburse the principal or the principal's successors in interest for the attorney fees
1801 and costs paid on the agent's behalf.

1802 Section 40. Section **75A-2-117**, which is renumbered from Section 75-9-118 is
1803 renumbered and amended to read:

1804 **[75-9-118]. 75A-2-117. Agent's resignation -- Notice.**

1805 Unless the power of attorney provides a different method for an agent's resignation, an
1806 agent may resign by giving notice to the principal and, if the principal is incapacitated:

1807 (1) to the guardian, if one has been appointed for the principal, and a coagent or
1808 successor agent; or

1809 (2) if there is no person described in Subsection (1), to:

1810 (a) the principal's caregiver;

1811 (b) another person reasonably believed by the agent to have sufficient interest in the
1812 principal's welfare; or

1813 (c) a governmental agency having authority to protect the welfare of the principal.

1814 Section 41. Section **75A-2-118**, which is renumbered from Section 75-9-119 is
1815 renumbered and amended to read:

1816 **[75-9-119]. 75A-2-118. Acceptance of and reliance upon acknowledged power
1817 of attorney.**

1818 (1) [~~For purposes of this section and Section 75-9-120~~] As used in this section,
1819 "acknowledged" means purportedly verified before a notary public or other individual
1820 authorized to take acknowledgements.

1821 (2) A person that in good faith accepts an acknowledged power of attorney without
1822 actual knowledge that the signature is not genuine may rely upon the presumption under
1823 Section [~~75-9-105~~] 75A-2-104 that the signature is genuine.

1824 (3) A person that in good faith accepts an acknowledged power of attorney without
1825 actual knowledge that the power of attorney is void, invalid, or terminated, that the purported

1826 agent's authority is void, invalid, or terminated, or that the agent is exceeding or improperly
1827 exercising the agent's authority may rely upon the power of attorney as if the power of attorney
1828 were genuine, valid, and still in effect, the agent's authority were genuine, valid, and still in
1829 effect, and the agent had not exceeded and had properly exercised the authority.

1830 (4) A person that is asked to accept an acknowledged power of attorney may request,
1831 and rely upon, without further investigation:

1832 (a) an agent's certification under penalty of perjury of any factual matter concerning the
1833 principal, agent, or power of attorney;

1834 (b) an English translation of the power of attorney if the power of attorney contains, in
1835 whole or in part, language other than English; and

1836 (c) an opinion of counsel as to any matter of law concerning the power of attorney if
1837 the person making the request provides in a writing or other record the reason for the request.

1838 (5) An English translation or an opinion of counsel requested under this section shall
1839 be provided at the principal's expense unless the request is made more than seven business days
1840 after the power of attorney is presented for acceptance.

1841 (6) For purposes of this section [~~and Section 75-9-120~~], a person that conducts
1842 activities through employees is without actual knowledge of a fact relating to a power of
1843 attorney, a principal, or an agent if the employee conducting the transaction involving the
1844 power of attorney is without actual knowledge of the fact.

1845 Section 42. Section **75A-2-119**, which is renumbered from Section 75-9-120 is
1846 renumbered and amended to read:

1847 ~~[75-9-120]~~. **75A-2-119. Liability for refusal to accept acknowledged power of**
1848 **attorney.**

1849 (1) As used in this section, "acknowledged" means purportedly verified before a notary
1850 public or other individual authorized to take acknowledgments.

1851 (2) Except as otherwise provided in Subsection ~~[(2)]~~ (3):

1852 (a) a person shall either accept an acknowledged power of attorney or request a
1853 certification, a translation, or an opinion of counsel under Subsection ~~[75-9-119(4)]~~

1854 75A-2-118(4) no later than seven business days after presentation of the power of attorney for
1855 acceptance;

1856 (b) if a person requests a certification, a translation, or an opinion of counsel under

1857 Subsection [~~75-9-119(4)~~] 75A-2-118(4), the person shall accept the power of attorney no later
1858 than five business days after receipt of the certification, translation, or opinion of counsel; and

1859 (c) a person may not require an additional or different form of power of attorney for
1860 authority granted in the power of attorney presented.

1861 [~~(2)~~] (3) A person is not required to accept an acknowledged power of attorney if:

1862 (a) the person is not otherwise required to engage in a transaction with the principal in
1863 the same circumstances;

1864 (b) engaging in a transaction with the agent or the principal in the same circumstances
1865 would be inconsistent with federal law;

1866 (c) the person has actual knowledge of the termination of the agent's authority or of the
1867 power of attorney before exercise of the power;

1868 (d) a request for a certification, a translation, or an opinion of counsel under Subsection
1869 [~~75-9-119(4)~~] 75A-2-118(4) is refused;

1870 (e) the person in good faith believes that the power is not valid or that the agent does
1871 not have the authority to perform the act requested, whether or not a certification, a translation,
1872 or an opinion of counsel under Subsection [~~75-9-119(4)~~] 75A-2-118(4) has been requested or
1873 provided; or

1874 (f) the person makes, or has actual knowledge that another person has made, a report to
1875 the Division of Aging and Adult Services stating a good faith belief that the principal may be
1876 subject to physical or financial abuse, neglect, exploitation, or abandonment by the agent or a
1877 person acting for or with the agent.

1878 [~~(3)~~] (4) A person that refuses in violation of this section to accept an acknowledged
1879 power of attorney is subject to:

1880 (a) a court order mandating acceptance of the power of attorney; and

1881 (b) liability for reasonable [~~attorney's~~] attorney fees and costs incurred in any action or
1882 proceeding that confirms the validity of the power of attorney or mandates acceptance of the
1883 power of attorney.

1884 [~~(4)~~] (5) Court proceedings under this section shall be conducted pursuant to the terms
1885 in the Uniform Probate Code governing venue and procedures.

1886 Section 43. Section **75A-2-120**, which is renumbered from Section 75-9-121 is
1887 renumbered and amended to read:

1888 ~~[75-9-121]~~. 75A-2-120. **Principles of law and equity.**

1889 Unless displaced by a provision of this chapter, the principles of law and equity
1890 supplement this act.

1891 Section 44. Section **75A-2-121**, which is renumbered from Section 75-9-122 is
1892 renumbered and amended to read:

1893 ~~[75-9-122]~~. 75A-2-121. **Laws applicable to financial institutions and entities.**

1894 This chapter does not supersede any other law applicable to financial institutions or
1895 other entities, and the other law controls if inconsistent with this chapter.

1896 Section 45. Section **75A-2-122**, which is renumbered from Section 75-9-123 is
1897 renumbered and amended to read:

1898 ~~[75-9-123]~~. 75A-2-122. **Remedies under other law.**

1899 The remedies under this chapter are not exclusive and do not abrogate any right or
1900 remedy under the law of this state other than this chapter.

1901 Section 46. Section **75A-2-201**, which is renumbered from Section 75-9-201 is
1902 renumbered and amended to read:

1903 **Part 2. Authority**

1904 ~~[75-9-201]~~. 75A-2-201. **Authority that requires specific grant -- Grant of**
1905 **general authority.**

1906 (1) An agent under a power of attorney may do the following on behalf of the principal
1907 or with the principal's property only if the power of attorney expressly grants the agent the
1908 authority, and exercise of the authority is not otherwise prohibited by another agreement or
1909 instrument to which the authority or property is subject:

1910 (a) create, amend, revoke, or terminate an inter vivos trust;

1911 (b) make a gift;

1912 (c) create or change rights of survivorship;

1913 (d) create or change a beneficiary designation;

1914 (e) delegate authority granted under the power of attorney;

1915 (f) waive the principal's right to be a beneficiary of a joint and survivor annuity,
1916 including a survivor benefit under a retirement plan;

1917 (g) exercise fiduciary powers that the principal has authority to delegate; or

1918 (h) disclaim property or otherwise exercise a power of appointment.

1919 (2) Notwithstanding a grant of authority to do an act described in Subsection (1),
1920 unless the power of attorney otherwise provides, an agent that is not an ancestor, spouse, or
1921 descendant of the principal may not exercise authority under a power of attorney to create in
1922 the agent, or in an individual to whom the agent owes a legal obligation of support, an interest
1923 in the principal's property, whether by gift, right of survivorship, beneficiary designation,
1924 disclaimer, or otherwise.

1925 (3) Subject to Subsections (1), (2), (4), and (5), if a power of attorney grants to an agent
1926 authority to do all acts that a principal could do, the agent has the general authority described in
1927 Sections [~~75-9-204 through 75-9-216~~] 75A-2-204 through 75A-2-216.

1928 (4) Unless the power of attorney otherwise provides, a grant of authority to make a gift
1929 is subject to Section [~~75-9-217~~] 75A-2-217.

1930 (5) Subject to Subsections (1), (2), and (4), if the subjects over which authority is
1931 granted in a power of attorney are similar or overlap, the broadest authority controls.

1932 (6) Authority granted in a power of attorney is exercisable with respect to property that
1933 the principal has when the power of attorney is executed or acquires later, whether or not the
1934 property is located in this state and whether or not the authority is exercised or the power of
1935 attorney is executed in this state.

1936 (7) An act performed by an agent pursuant to a power of attorney has the same effect,
1937 inures to the benefit of, and binds the principal and the principal's successors in interest as if
1938 the principal had performed the act.

1939 Section 47. Section **75A-2-202**, which is renumbered from Section 75-9-202 is
1940 renumbered and amended to read:

1941 [~~75-9-202~~]. **75A-2-202. Incorporation of authority.**

1942 (1) An agent has authority described in this part if the power of attorney refers to
1943 general authority with respect to the descriptive term for the subjects stated in Sections
1944 [~~75-9-204 through 75-9-217~~] 75A-2-204 through 75A-2-217 or cites the section in which the
1945 authority is described.

1946 (2) A reference in a power of attorney to general authority with respect to the
1947 descriptive term for a subject in Sections [~~75-9-204 through 75-9-217~~] 75A-2-204 through
1948 75A-2-217 or a citation to a section of Sections [~~75-9-204 through 75-9-217~~] 75A-2-204
1949 through 75A-2-217 incorporates the entire section as if it were set out in full in the power of

1950 attorney.

1951 (3) A principal may modify authority incorporated by reference.

1952 Section 48. Section **75A-2-203**, which is renumbered from Section 75-9-203 is
1953 renumbered and amended to read:

1954 ~~[75-9-203]~~. **75A-2-203. Construction of authority generally.**

1955 Except as otherwise provided in the power of attorney, by executing a power of attorney
1956 that incorporates by reference a subject described in Sections ~~[75-9-204 through 75-9-217]~~
1957 75A-2-204 through 75A-2-217 or that grants to an agent authority to do all acts that a principal
1958 could do pursuant to Subsection ~~[75-9-201(3)]~~ 75A-2-201(3), a principal authorizes the agent,
1959 with respect to that subject, to:

1960 (1) demand, receive, and obtain, by litigation or otherwise, money or another thing of
1961 value to which the principal is, may become, or claims to be entitled, and conserve, invest,
1962 disburse, or use anything so received or obtained for the purposes intended;

1963 (2) contract in any manner with any person, on terms agreeable to the agent, to
1964 accomplish a purpose of a transaction and perform, rescind, cancel, terminate, reform, restate,
1965 release, or modify the contract or another contract made by or on behalf of the principal;

1966 (3) execute, acknowledge, seal, deliver, file, or record any instrument or
1967 communication the agent considers desirable to accomplish a purpose of a transaction,
1968 including creating at any time a schedule listing some or all of the principal's property and
1969 attaching it to the power of attorney;

1970 (4) initiate, participate in, submit to alternative dispute resolution, settle, oppose, or
1971 propose or accept a compromise with respect to a claim existing in favor of or against the
1972 principal or intervene in litigation relating to the claim;

1973 (5) seek on the principal's behalf the assistance of a court or other governmental agency
1974 to carry out an act authorized in the power of attorney;

1975 (6) engage, compensate, and discharge an attorney, accountant, discretionary
1976 investment manager, expert witness, or other advisor;

1977 (7) prepare, execute, and file a record, report, or other document to safeguard or
1978 promote the principal's interest under a statute or regulation;

1979 (8) communicate with any representative or employee of a government or
1980 governmental subdivision, agency, or instrumentality on behalf of the principal;

1981 (9) access communications intended for, and communicate on behalf of the principal,
1982 whether by mail, electronic transmission, telephone, or other means; and

1983 (10) do any lawful act with respect to the subject and all property related to the subject.

1984 Section 49. Section **75A-2-204**, which is renumbered from Section 75-9-204 is
1985 renumbered and amended to read:

1986 **[75-9-204]. 75A-2-204. Real property.**

1987 Unless the power of attorney otherwise provides, language in a power of attorney
1988 granting general authority with respect to real property authorizes the agent to:

1989 (1) demand, buy, lease, receive, accept as a gift or as security for an extension of credit,
1990 or otherwise acquire or reject an interest in real property or a right incident to real property;

1991 (2) (a) sell;

1992 (b) exchange;

1993 (c) convey with or without covenants, representations, or warranties;

1994 (d) quitclaim;

1995 (e) release;

1996 (f) surrender;

1997 (g) retain title for security;

1998 (h) encumber;

1999 (i) partition;

2000 (j) consent to partitioning;

2001 (k) subject to an easement or covenant;

2002 (l) subdivide;

2003 (m) apply for zoning or other governmental permits;

2004 (n) plat or consent to platting;

2005 (o) develop;

2006 (p) grant an option concerning;

2007 (q) lease;

2008 (r) sublease;

2009 (s) contribute to an entity in exchange for an interest in that entity; or

2010 (t) otherwise grant or dispose of an interest in real property or a right incident to real
2011 property;

2012 (3) pledge or mortgage an interest in real property or right incident to real property as
2013 security to borrow money or pay, renew, or extend the time of payment of a debt of the
2014 principal or a debt guaranteed by the principal;

2015 (4) release, assign, satisfy, or enforce by litigation or otherwise a mortgage, deed of
2016 trust, conditional sale contract, encumbrance, lien, or other claim to real property that exists or
2017 is asserted;

2018 (5) manage or conserve an interest in real property or a right incident to real property
2019 owned or claimed to be owned by the principal, including:

2020 (a) insuring against liability or casualty or other loss;

2021 (b) obtaining or regaining possession of or protecting the interest or right by litigation
2022 or otherwise;

2023 (c) paying, assessing, compromising, or contesting taxes or assessments or applying for
2024 and receiving refunds in connection with taxes or assessments; and

2025 (d) purchasing supplies, hiring assistance or labor, and making repairs or alterations to
2026 the real property;

2027 (6) use, develop, alter, replace, remove, erect, or install structures or other
2028 improvements upon real property in or incident to which the principal has, or claims to have,
2029 an interest or right;

2030 (7) participate in a reorganization with respect to real property or an entity that owns an
2031 interest in or right incident to real property and receive, hold, and act with respect to stocks and
2032 bonds or other property received in a plan of reorganization, including:

2033 (a) selling or otherwise disposing of stocks and bonds;

2034 (b) exercising or selling an option, right of conversion, or similar right with respect to
2035 stocks and bonds; and

2036 (c) exercising any voting rights in person or by proxy;

2037 (8) change the form of title of an interest in or right incident to real property; and

2038 (9) dedicate to public use, with or without consideration, easements or other real
2039 property in which the principal has, or claims to have, an interest.

2040 Section 50. Section **75A-2-205**, which is renumbered from Section 75-9-205 is
2041 renumbered and amended to read:

2042 ~~[75-9-205]~~. **75A-2-205**. **Tangible personal property.**

2043 Unless the power of attorney otherwise provides, language in a power of attorney
2044 granting general authority with respect to tangible personal property authorizes the agent to:

2045 (1) demand, buy, receive, accept as a gift or as security for an extension of credit, or
2046 otherwise acquire or reject ownership or possession of tangible personal property or an interest
2047 in tangible personal property;

2048 (2) sell; exchange; convey with or without covenants, representations, or warranties;
2049 quitclaim; release; surrender; create a security interest in; grant options concerning; lease;
2050 sublease; or otherwise dispose of tangible personal property or an interest in tangible personal
2051 property;

2052 (3) grant a security interest in tangible personal property or an interest in tangible
2053 personal property as security to borrow money or pay, renew, or extend the time of payment of
2054 a debt of the principal or a debt guaranteed by the principal;

2055 (4) release, assign, satisfy, or enforce by litigation or otherwise, a security interest, lien,
2056 or other claim on behalf of the principal, with respect to tangible personal property or an
2057 interest in tangible personal property;

2058 (5) manage or conserve tangible personal property or an interest in tangible personal
2059 property on behalf of the principal, including:

2060 (a) insuring against liability, casualty, or other loss;

2061 (b) obtaining or regaining possession of or protecting the property or interest, by
2062 litigation or otherwise;

2063 (c) paying, assessing, compromising, or contesting taxes or assessments or applying for
2064 and receiving refunds in connection with taxes or assessments;

2065 (d) moving the property from place to place;

2066 (e) storing the property for hire or on a gratuitous bailment; and

2067 (f) using and making repairs, alterations, or improvements to the property; and

2068 (6) change the form of title of an interest in tangible personal property.

2069 Section 51. Section **75A-2-206**, which is renumbered from Section 75-9-206 is
2070 renumbered and amended to read:

2071 **[75-9-206]. 75A-2-206. Stocks and bonds.**

2072 Unless the power of attorney otherwise provides, language in a power of attorney
2073 granting general authority with respect to stocks and bonds authorizes the agent to:

- 2074 (1) buy, sell, and exchange stocks and bonds;
- 2075 (2) establish, continue, modify, or terminate an account with respect to stocks and
- 2076 bonds;
- 2077 (3) pledge stocks and bonds as security to borrow, pay, renew, or extend the time of
- 2078 payment of a debt of the principal;
- 2079 (4) receive certificates and other evidences of ownership with respect to stocks and
- 2080 bonds; and
- 2081 (5) exercise voting rights with respect to stocks and bonds in person or by proxy, enter
- 2082 into voting trusts, and consent to limitations on the right to vote.

2083 Section 52. Section **75A-2-207**, which is renumbered from Section 75-9-207 is

2084 renumbered and amended to read:

2085 ~~[75-9-207]~~. **75A-2-207. Commodities and options.**

2086 Unless the power of attorney otherwise provides, language in a power of attorney

2087 granting general authority with respect to commodities and options authorizes the agent to:

- 2088 (1) buy, sell, exchange, assign, settle, and exercise commodity futures contracts and
- 2089 call or put options on stocks or stock indexes traded on a regulated option exchange; and
- 2090 (2) establish, continue, modify, and terminate option accounts.

2091 Section 53. Section **75A-2-208**, which is renumbered from Section 75-9-208 is

2092 renumbered and amended to read:

2093 ~~[75-9-208]~~. **75A-2-208. Banks and other financial institutions.**

2094 Unless the power of attorney otherwise provides, language in a power of attorney

2095 granting general authority with respect to banks and other financial institutions authorizes the

2096 agent to:

- 2097 (1) continue, modify, and terminate an account or other banking arrangement made by
- 2098 or on behalf of the principal;
- 2099 (2) establish, modify, and terminate an account or other banking arrangement with a
- 2100 bank, trust company, savings and loan association, credit union, thrift company, brokerage
- 2101 firm, or other financial institution selected by the agent;
- 2102 (3) contract for services available from a financial institution, including renting or
- 2103 closing a safe deposit box or space in a vault;
- 2104 (4) withdraw, by check, order, electronic funds transfer, or otherwise, money or

- 2105 property of the principal deposited with or left in the custody of a financial institution;
- 2106 (5) receive statements of account, vouchers, notices, and similar documents from a
- 2107 financial institution and act with respect to them;
- 2108 (6) enter a safe deposit box or vault and withdraw or add to the contents;
- 2109 (7) borrow money and pledge as security personal property of the principal necessary
- 2110 to borrow money or pay, renew, or extend the time of payment of a debt of the principal or a
- 2111 debt guaranteed by the principal;
- 2112 (8) make, assign, draw, endorse, discount, guarantee, and negotiate promissory notes,
- 2113 checks, drafts, and other negotiable or nonnegotiable paper of the principal or payable to the
- 2114 principal or the principal's order, transfer money, receive the cash or other proceeds of those
- 2115 transactions, and accept a draft drawn by a person upon the principal and pay it when due;
- 2116 (9) receive for the principal and act upon a sight draft, warehouse receipt, or other
- 2117 document of title whether tangible or electronic, or other negotiable or nonnegotiable
- 2118 instrument;
- 2119 (10) apply for, receive, and use letters of credit, credit and debit cards, electronic
- 2120 transaction authorizations, and traveler's checks from a financial institution and give an
- 2121 indemnity or other agreement in connection with letters of credit; and
- 2122 (11) consent to an extension of the time of payment with respect to commercial paper
- 2123 or a financial transaction with a financial institution.

2124 Section 54. Section **75A-2-209**, which is renumbered from Section 75-9-209 is

2125 renumbered and amended to read:

2126 ~~[75-9-209]~~. **75A-2-209. Operation of entity or business.**

2127 Subject to the terms of a document or an agreement governing an entity or an entity

2128 ownership interest, and unless the power of attorney otherwise provides, language in a power

2129 of attorney granting general authority with respect to operation of an entity or business

2130 authorizes the agent to:

- 2131 (1) operate, buy, sell, enlarge, reduce, or terminate an ownership interest;
- 2132 (2) perform a duty or discharge a liability and exercise in person or by proxy a right,
- 2133 power, privilege, or option that the principal has, may have, or claims to have;
- 2134 (3) enforce the terms of an ownership agreement;
- 2135 (4) initiate, participate in, submit to alternative dispute resolution, settle, oppose, or

2136 propose or accept a compromise with respect to litigation to which the principal is a party
2137 because of an ownership interest;

2138 (5) exercise in person or by proxy, or enforce by litigation or otherwise, a right, power,
2139 privilege, or option the principal has or claims to have as the holder of stocks and bonds;

2140 (6) initiate, participate in, submit to alternative dispute resolution, settle, oppose, or
2141 propose or accept a compromise with respect to litigation to which the principal is a party
2142 concerning stocks and bonds;

2143 (7) with respect to an entity or business owned solely by the principal:

2144 (a) continue, modify, renegotiate, extend, and terminate a contract made by or on
2145 behalf of the principal with respect to the entity or business before execution of the power of
2146 attorney;

2147 (b) determine:

2148 (i) the location of its operation;

2149 (ii) the nature and extent of its business;

2150 (iii) the methods of manufacturing, selling, merchandising, financing, accounting, and
2151 advertising employed in its operation;

2152 (iv) the amount and types of insurance carried; and

2153 (v) the mode of engaging, compensating, and dealing with its employees and
2154 accountants, attorneys, or other advisors;

2155 (c) change the name or form of organization under which the entity or business is
2156 operated and enter into an ownership agreement with other persons to take over all or part of
2157 the operation of the entity or business; and

2158 (d) demand and receive money due or claimed by the principal or on the principal's
2159 behalf in the operation of the entity or business and control and disburse the money in the
2160 operation of the entity or business;

2161 (8) put additional capital into an entity or business in which the principal has an
2162 interest;

2163 (9) join in a plan of reorganization, consolidation, conversion, domestication, or
2164 merger of the entity or business;

2165 (10) sell or liquidate all or part of an entity or business;

2166 (11) establish the value of an entity or business under a buy-out agreement to which the

2167 principal is a party;

2168 (12) prepare, sign, file, and deliver reports, compilations of information, returns, or
2169 other papers with respect to an entity or business and make related payments; and

2170 (13) pay, compromise, or contest taxes, assessments, fines, or penalties and perform
2171 any other act to protect the principal from illegal or unnecessary taxation, assessments, fines, or
2172 penalties, with respect to an entity or business, including attempts to recover, in any manner
2173 permitted by law, money paid before or after the execution of the power of attorney.

2174 Section 55. Section **75A-2-210**, which is renumbered from Section 75-9-210 is
2175 renumbered and amended to read:

2176 ~~[75-9-210]~~. **75A-2-210. Insurance and annuities.**

2177 Unless the power of attorney otherwise provides, language in a power of attorney
2178 granting general authority with respect to insurance and annuities authorizes the agent to:

2179 (1) continue, pay the premium or make a contribution on, modify, exchange, rescind,
2180 release, or terminate a contract procured by or on behalf of the principal that insures or
2181 provides an annuity to either the principal or another person, whether or not the principal is a
2182 beneficiary under the contract;

2183 (2) procure new, different, and additional contracts of insurance and annuities for the
2184 principal and the principal's spouse, children, and other dependents, and select the amount, type
2185 of insurance or annuity, and mode of payment;

2186 (3) pay the premium or make a contribution on, modify, exchange, rescind, release, or
2187 terminate a contract of insurance or annuity procured by the agent;

2188 (4) apply for and receive a loan secured by a contract of insurance or annuity;

2189 (5) surrender and receive the cash surrender value on a contract of insurance or
2190 annuity;

2191 (6) exercise an election;

2192 (7) exercise investment powers available under a contract of insurance or annuity;

2193 (8) change the manner of paying premiums on a contract of insurance or annuity;

2194 (9) change or convert the type of insurance or annuity with respect to which the
2195 principal has or claims to have authority described in this section;

2196 (10) apply for and procure a benefit or assistance under a statute or regulation to
2197 guarantee or pay premiums of a contract of insurance on the life of the principal;

2198 (11) collect, sell, assign, hypothecate, borrow against, or pledge the interest of the
2199 principal in a contract of insurance or annuity;

2200 (12) select the form and timing of the payment of proceeds from a contract of insurance
2201 or annuity; and

2202 (13) pay, from proceeds or otherwise, compromise or contest, and apply for refunds in
2203 connection with a tax or assessment levied by a taxing authority with respect to a contract of
2204 insurance or annuity or its proceeds or liability accruing by reason of the tax or assessment.

2205 Section 56. Section **75A-2-211**, which is renumbered from Section 75-9-211 is
2206 renumbered and amended to read:

2207 ~~[75-9-211]~~. **75A-2-211. Estates, trusts, and other beneficial interests.**

2208 (1) ~~[In this section]~~ As used in this section, "estate, trust, or other beneficial interest"
2209 means a trust, probate estate, guardianship, conservatorship, escrow, custodianship, or fund
2210 from which the principal is, may become, or claims to be entitled to a share or payment.

2211 (2) Unless the power of attorney otherwise provides, language in a power of attorney
2212 granting general authority with respect to estates, trusts, and other beneficial interests
2213 authorizes the agent to:

2214 (a) accept, receive, receipt for, sell, assign, pledge, or exchange a share in or payment
2215 from an estate, trust, or other beneficial interest;

2216 (b) demand or obtain money or another thing of value to which the principal is, may
2217 become, or claims to be entitled by reason of an estate, trust, or other beneficial interest, by
2218 litigation or otherwise;

2219 (c) exercise for the benefit of the principal a presently exercisable general power of
2220 appointment held by the principal;

2221 (d) initiate, participate in, submit to alternative dispute resolution, settle, oppose, or
2222 propose or accept a compromise with respect to litigation to ascertain the meaning, validity, or
2223 effect of a deed, will, declaration of trust, or other instrument or transaction affecting the
2224 interest of the principal;

2225 (e) initiate, participate in, submit to alternative dispute resolution, settle, oppose, or
2226 propose or accept a compromise with respect to litigation to remove, substitute, or surcharge a
2227 fiduciary;

2228 (f) conserve, invest, disburse, or use anything received for an authorized purpose;

2229 (g) transfer an interest of the principal in real property, stocks and bonds, accounts with
2230 financial institutions or securities intermediaries, insurance, annuities, and other property to the
2231 trustee of a revocable trust created by the principal as settlor; and

2232 (h) reject, renounce, disclaim, release, or consent to a reduction in or modification of a
2233 share in or payment from an estate, trust, or other beneficial interest.

2234 Section 57. Section **75A-2-212**, which is renumbered from Section 75-9-212 is
2235 renumbered and amended to read:

2236 ~~[75-9-212]~~. **75A-2-212. Claims and litigation.**

2237 Unless the power of attorney otherwise provides, language in a power of attorney
2238 granting general authority with respect to claims and litigation authorizes the agent to:

2239 (1) assert and maintain before a court or administrative agency a claim, claim for relief,
2240 cause of action, counterclaim, offset, recoupment, or defense, including an action to recover
2241 property or other thing of value, recover damages sustained by the principal, eliminate or
2242 modify tax liability, or seek an injunction, specific performance, or other relief;

2243 (2) bring an action to determine adverse claims or intervene or otherwise participate in
2244 litigation;

2245 (3) seek an attachment, garnishment, order of arrest, or other preliminary, provisional,
2246 or intermediate relief and use an available procedure to effect or satisfy a judgment, order, or
2247 decree;

2248 (4) make or accept a tender, offer of judgment, or admission of facts, submit a
2249 controversy on an agreed statement of facts, consent to examination, and bind the principal in
2250 litigation;

2251 (5) submit to alternative dispute resolution, settle, and propose or accept a
2252 compromise;

2253 (6) waive the issuance and service of process upon the principal, accept service of
2254 process, appear for the principal, designate persons upon which process directed to the
2255 principal may be served, execute and file or deliver stipulations on the principal's behalf, verify
2256 pleadings, seek appellate review, procure and give surety and indemnity bonds, contract and
2257 pay for the preparation and printing of records and briefs, receive, execute, and file or deliver a
2258 consent, waiver, release, confession of judgment, satisfaction of judgment, notice, agreement,
2259 or other instrument in connection with the prosecution, settlement, or defense of a claim or

2260 litigation;

2261 (7) act for the principal with respect to bankruptcy or insolvency, whether voluntary or
2262 involuntary, concerning the principal or some other person, or with respect to a reorganization,
2263 receivership, or application for the appointment of a receiver or trustee that affects an interest
2264 of the principal in property or other thing of value;

2265 (8) pay a judgment, award, or order against the principal or a settlement made in
2266 connection with a claim or litigation; and

2267 (9) receive money or other thing of value paid in settlement of or as proceeds of a
2268 claim or litigation.

2269 Section 58. Section **75A-2-213**, which is renumbered from Section 75-9-213 is
2270 renumbered and amended to read:

2271 ~~[75-9-213]~~. **75A-2-213. Personal and family maintenance.**

2272 (1) Unless the power of attorney otherwise provides, language in a power of attorney
2273 granting general authority with respect to personal and family maintenance authorizes the agent
2274 to:

2275 (a) perform the acts necessary to maintain the customary standard of living of the
2276 principal, the principal's spouse, and the following individuals, whether living when the power
2277 of attorney is executed or later born:

2278 (i) the principal's children;

2279 (ii) other individuals legally entitled to be supported by the principal; and

2280 (iii) the individuals whom the principal has customarily supported or indicated the
2281 intent to support;

2282 (b) make periodic payments of child support and other family maintenance required by
2283 a court or governmental agency or an agreement to which the principal is a party;

2284 (c) provide living quarters for the individuals described in Subsection (1)(a) by:

2285 (i) purchase, lease, or other contract; or

2286 (ii) paying the operating costs, including interest, amortization payments, repairs,
2287 improvements, and taxes, for premises owned by the principal or occupied by those
2288 individuals;

2289 (d) provide normal domestic help, usual vacations and travel expenses, and funds for
2290 shelter, clothing, food, appropriate education, including postsecondary and vocational

2291 education, and other current living costs for the individuals described in Subsection (1)(a);

2292 (e) pay expenses for necessary health care and custodial care on behalf of the
2293 individuals described in Subsection (1)(a);

2294 (f) act as the principal's personal representative pursuant to the Health Insurance
2295 Portability and Accountability Act, Sections 1171 through 1179 of the Social Security Act, 42
2296 U.S.C. Sec. 1320d, and applicable regulations, in making decisions related to the past, present,
2297 or future payment for the provision of health care consented to by the principal or anyone
2298 authorized under the law of this state to consent to health care on behalf of the principal;

2299 (g) continue any provision made by the principal for automobiles or other means of
2300 transportation, including registering, licensing, insuring, and replacing them, for the individuals
2301 described in Subsection (1)(a);

2302 (h) maintain credit and debit accounts and open new accounts for the convenience of
2303 the individuals described in Subsection (1)(a); and

2304 (i) continue payments incidental to the membership or affiliation of the principal in a
2305 religious institution, club, society, order, or other organization or to continue contributions to
2306 those organizations.

2307 (2) Authority with respect to personal and family maintenance is neither dependent
2308 upon, nor limited by, authority that an agent may or may not have with respect to gifts under
2309 this chapter.

2310 Section 59. Section **75A-2-214**, which is renumbered from Section 75-9-214 is
2311 renumbered and amended to read:

2312 ~~[75-9-214].~~ **75A-2-214. Benefits from governmental programs or civil or**
2313 **military service.**

2314 (1) ~~[In this section]~~ As used in this section, "benefits from governmental programs or
2315 civil or military service" means any benefit, program, or assistance provided under a statute or
2316 regulation, including social security, Medicare, and Medicaid.

2317 (2) Unless the power of attorney otherwise provides, language in a power of attorney
2318 granting general authority with respect to benefits from governmental programs or civil or
2319 military service authorizes the agent to:

2320 (a) execute vouchers in the name of the principal for allowances and reimbursements
2321 payable by the United States or a foreign government or by a state or subdivision of a state to

2322 the principal, including allowances and reimbursements for transportation of the individuals
2323 described in Subsection [~~75-9-213~~(1)(a)] 75A-2-213(1)(a), and for shipment of their household
2324 effects;

2325 (b) take possession and order the removal and shipment of property of the principal
2326 from a post, warehouse, depot, dock, or other place of storage or safekeeping, either
2327 governmental or private, and execute and deliver a release, voucher, receipt, bill of lading,
2328 shipping ticket, certificate, or other instrument for that purpose;

2329 (c) enroll in, apply for, select, reject, change, amend, or discontinue, on the principal's
2330 behalf, a benefit or program;

2331 (d) prepare, file, and maintain a claim of the principal for a benefit or assistance,
2332 financial or otherwise, to which the principal may be entitled under a statute or regulation;

2333 (e) initiate, participate in, submit to alternative dispute resolution, settle, oppose, or
2334 propose or accept a compromise with respect to litigation concerning any benefit or assistance
2335 the principal may be entitled to receive under a statute or regulation; and

2336 (f) receive the financial proceeds of a claim described in Subsection (2)(d) and
2337 conserve, invest, disburse, or use for a lawful purpose anything received.

2338 Section 60. Section **75A-2-215**, which is renumbered from Section 75-9-215 is
2339 renumbered and amended to read:

2340 ~~[75-9-215]~~. **75A-2-215. Retirement plans.**

2341 (1) [~~In this section~~] As used in this section, "retirement plan" means a plan or account
2342 created by an employer, the principal, or another individual to provide retirement benefits or
2343 deferred compensation of which the principal is a participant, beneficiary, or owner, including
2344 a plan or account under the following sections of the Internal Revenue Code:

2345 (a) an individual retirement account under Section 408, Internal Revenue Code;

2346 (b) a Roth individual retirement account under Section 408A, Internal Revenue Code;

2347 (c) a deemed individual retirement account under Section 408(q), Internal Revenue
2348 Code;

2349 (d) an annuity or mutual fund custodial account under Section 403(b), Internal Revenue
2350 Code;

2351 (e) a pension, profit-sharing, stock bonus, or other retirement plan qualified under
2352 Section 401(a), Internal Revenue Code;

2353 (f) a plan under Section 457(b), Internal Revenue Code; and
2354 (g) a nonqualified deferred compensation plan under Section 409A, Internal Revenue
2355 Code.

2356 (2) Unless the power of attorney otherwise provides, language in a power of attorney
2357 granting general authority with respect to retirement plans authorizes the agent to:

2358 (a) select the form and timing of payments under a retirement plan and withdraw
2359 benefits from a plan;

2360 (b) make a rollover, including a direct trustee-to-trustee rollover, of benefits from one
2361 retirement plan to another;

2362 (c) establish a retirement plan in the principal's name;

2363 (d) make contributions to a retirement plan;

2364 (e) exercise investment powers available under a retirement plan; and

2365 (f) borrow from, sell assets to, or purchase assets from a retirement plan.

2366 Section 61. Section **75A-2-216**, which is renumbered from Section 75-9-216 is
2367 renumbered and amended to read:

2368 **[75-9-216]. 75A-2-216. Taxes.**

2369 Unless the power of attorney otherwise provides, language in a power of attorney
2370 granting general authority with respect to taxes authorizes the agent to:

2371 (1) prepare, sign, and file federal, state, local, and foreign income, gift, payroll,
2372 property, Federal Insurance Contributions Act, and other tax returns, claims for refunds,
2373 requests for extension of time, petitions regarding tax matters, and any other tax-related
2374 documents, including receipts, offers, waivers, consents, including consents and agreements
2375 under Section 2032A, Internal Revenue Code, closing agreements, and any power of attorney
2376 required by the Internal Revenue Service or other taxing authority with respect to a tax year
2377 upon which the statute of limitations has not run and the following 25 tax years;

2378 (2) pay taxes due, collect refunds, post bonds, receive confidential information, and
2379 contest deficiencies determined by the Internal Revenue Service or other taxing authority;

2380 (3) exercise any election available to the principal under federal, state, local, or foreign
2381 tax law; and

2382 (4) act for the principal in all tax matters for all periods before the Internal Revenue
2383 Service or other taxing authority.

2384 Section 62. Section **75A-2-217**, which is renumbered from Section 75-9-217 is
2385 renumbered and amended to read:

2386 ~~[75-9-217]~~. **75A-2-217. Gifts.**

2387 (1) ~~[In this section, a gift "for the benefit of" a person]~~ As used in this section, "for the
2388 benefit of" includes a gift to a trust, an account under ~~[the Uniform Transfers to Minors Act~~
2389 ~~(1983/1986)]~~ Chapter 8, Uniform Transfers to Minors Act, and a tuition savings account or
2390 prepaid tuition plan as defined under Section 529, Internal Revenue Code.

2391 (2) Unless the power of attorney otherwise provides, language in a power of attorney
2392 granting general authority with respect to gifts authorizes the agent only to:

2393 (a) make outright to, or for the benefit of, a person a gift of any of the principal's
2394 property, including by the exercise of a presently exercisable general power of appointment
2395 held by the principal, in an amount per donee not to exceed the annual dollar limits of the
2396 federal gift tax exclusion under Section 2503(b), Internal Revenue Code, without regard to
2397 whether the federal gift tax exclusion applies to the gift, or if the principal's spouse agrees to
2398 consent to a split gift pursuant to Section 2513, Internal Revenue Code, in an amount per donee
2399 not to exceed twice the annual federal gift tax exclusion limit; and

2400 (b) consent, pursuant to Section 2513, Internal Revenue Code, to the splitting of a gift
2401 made by the principal's spouse in an amount per donee not to exceed the aggregate annual gift
2402 tax exclusions for both spouses.

2403 (3) An agent may make a gift of the principal's property only as the agent determines is
2404 consistent with the principal's objectives if actually known by the agent and, if unknown, as the
2405 agent determines is consistent with the principal's best interest based on all relevant factors,
2406 including:

2407 (a) the value and nature of the principal's property;

2408 (b) the principal's foreseeable obligations and need for maintenance;

2409 (c) minimization of taxes, including income, estate, inheritance, generation-skipping
2410 transfer, and gift taxes;

2411 (d) eligibility for a benefit, program, or assistance under a statute or regulation; and

2412 (e) the principal's personal history of making or joining in making gifts.

2413 Section 63. Section **75A-2-301**, which is renumbered from Section 75-9-301 is
2414 renumbered and amended to read:

Part 3. Statutory Forms

[75-9-301]. 75A-2-301. Statutory form power of attorney.

A document substantially in the following form may be used to create a statutory form power of attorney that has the meaning and effect prescribed by this chapter.

STATUTORY FORM POWER OF ATTORNEY

IMPORTANT INFORMATION

This power of attorney authorizes another person (your agent) to make decisions concerning your property for you (the principal). Your agent will be able to make decisions and act with respect to your property (including your money) whether or not you are able to act for yourself. The meaning of authority over subjects listed on this form is explained in [~~Title 75, Chapter 9, Uniform Power of Attorney Act~~] Title 75A, Chapter 2, Uniform Power of Attorney Act.

This power of attorney does not authorize the agent to make health care decisions for you.

You should select someone you trust to serve as your agent. Unless you specify otherwise, generally the agent's authority will continue until you die or revoke the power of attorney, or the agent resigns or is unable to act for you.

Your agent is entitled to reasonable compensation unless you state otherwise in the Special Instructions.

This form provides for designation of one agent. If you wish to name more than one agent you may name a coagent in the Special Instructions. Coagents are not required to act together unless you include that requirement in the Special Instructions.

If your agent is unable or unwilling to act for you, your power of attorney will end unless you have named a successor agent. You may also name a second successor agent.

This power of attorney becomes effective immediately unless you state otherwise in the Special Instructions.

If you have questions about the power of attorney or the authority you are granting to your agent, you should seek legal advice before signing this form.

DESIGNATION OF AGENT

I _____ name the following

(Name of Principal)

2446 person as my agent:

2447 Name of Agent: _____

2448 Agent's Address: _____

2449 Agent's Telephone Number: _____

2450 DESIGNATION OF SUCCESSOR AGENT(S) (OPTIONAL)

2451 If my agent is unable or unwilling to act for me, I name as my successor agent:

2452 Name of Successor Agent: _____

2453 Successor Agent's Address: _____

2454 Successor Agent's Telephone Number: _____

2455 If my successor agent is unable or unwilling to act for me, I name as my second successor agent:

2457 Name of Second Successor Agent: _____

2458 Second Successor Agent's Address: _____

2459 Second Successor Agent's Telephone Number: _____

2460 GRANT OF GENERAL AUTHORITY

2461 I grant my agent and any successor agent general authority to act for me with respect to the
2462 following subjects as defined in [~~Title 75, Chapter 9, Uniform Power of Attorney Act~~] Title
2463 75A, Chapter 2, Uniform Power of Attorney Act:

2464 (INITIAL each subject you want to include in the agent's general authority. If you wish to grant
2465 general authority over all of the subjects you may initial "All Preceding Subjects" instead of
2466 initialing each subject.)

2467 Real Property

2468 Tangible Personal Property

2469 Stocks and Bonds

2470 Commodities and Options

2471 Banks and Other Financial Institutions

2472 Operation of Entity or Business

2473 Insurance and Annuities

2474 Estates, Trusts, and Other Beneficial Interests

2475 Claims and Litigation

2476 Personal and Family Maintenance

2477 Benefits from Governmental Programs or Civil or Military Service

2478 Retirement Plans

2479 Taxes

2480 All Preceding Subjects

2481 GRANT OF SPECIFIC AUTHORITY (OPTIONAL)

2482 My agent MAY NOT do any of the following specific acts for me UNLESS I have INITIALED
2483 the specific authority listed below:

2484 (CAUTION: Granting any of the following will give your agent the authority to take actions
2485 that could significantly reduce your property or change how your property is distributed at your
2486 death. INITIAL ONLY the specific authority you WANT to give your agent.)

2487 Create, amend, revoke, or terminate an inter vivos trust

2488 Make a gift, subject to the limitations of Section [~~75-9-217~~] [75A-2-217](#), and any special
2489 instructions in this power of attorney

2490 Create or change rights of survivorship

2491 Create or change a beneficiary designation

2492 Authorize another person to exercise the authority granted under this power of attorney

2493 Waive the principal's right to be a beneficiary of a joint and survivor annuity, including a
2494 survivor benefit under a retirement plan

2495 Exercise fiduciary powers that the principal has authority to delegate

2496 Disclaim or refuse an interest in property, including a power of appointment

2497 LIMITATION ON AGENT'S AUTHORITY

2498 An agent that is not my ancestor, spouse, or descendant MAY NOT use my property to benefit
2499 the agent or a person to whom the agent owes an obligation of support unless I have included
2500 that authority in the Special Instructions.

2501 SPECIAL INSTRUCTIONS (OPTIONAL)

2502 You may give special instructions on the following lines:

2503 _____

2504 _____

2505 _____

2506 _____

2507 _____

2508 _____

2509 _____

2510 EFFECTIVE DATE

2511 This power of attorney is effective immediately unless I have stated otherwise in the Special
2512 Instructions.

2513 NOMINATION OF CONSERVATOR OR GUARDIAN (OPTIONAL)

2514 If it becomes necessary for a court to appoint a conservator of my estate or guardian of my
2515 person, I nominate the following person(s) for appointment:

2516 Name of Nominee for conservator of my estate: _____

2517 Nominee's Address: _____

2518 Nominee's Telephone Number: _____

2519 Name of Nominee for guardian of my person: _____

2520 Nominee's Address: _____

2521 Nominee's Telephone Number: _____

2522 RELIANCE ON THIS POWER OF ATTORNEY

2523 Any person, including my agent, may rely upon the validity of this power of attorney or a copy
2524 of it unless that person knows it has terminated or is invalid.

2525 SIGNATURE AND ACKNOWLEDGMENT

2526 _____

2527 Your Signature Date

2528 _____

2529 Your Name Printed

2530 _____

2531 _____

2532 Your Address

2533 _____

2534 Your Telephone Number

2535 State of _____

2536 County of _____

2537 This document was acknowledged before me on _____,

2538 (Date)

2539 by _____.

2540 (Name of Principal)

2541 _____ (Seal, if any)

2542 Signature of Notary

2543 My commission expires: _____

2544 [This document prepared by:

2545 _____

2546 _____]

IMPORTANT INFORMATION FOR AGENT

2548 Agent's Duties

2549 When you accept the authority granted under this power of attorney, a special legal relationship
2550 is created between you and the principal. This relationship imposes upon you legal duties that
2551 continue until you resign or the power of attorney is terminated or revoked. You shall:

2552 (1) do what you know the principal reasonably expects you to do with the principal's
2553 property or, if you do not know the principal's expectations, act in the principal's best interest;

2554 (2) act in good faith;

2555 (3) do nothing beyond the authority granted in this power of attorney; and

2556 (4) disclose your identity as an agent whenever you act for the principal by writing or
2557 printing the name of the principal and signing your own name as "agent" in the following
2558 manner:

2559 (Principal's Name) by (Your Signature) as Agent

2560 Unless the Special Instructions in this power of attorney state otherwise, you must also:

2561 (1) act loyally for the principal's benefit;

2562 (2) avoid conflicts that would impair your ability to act in the principal's best interest;

2563 (3) act with care, competence, and diligence;

2564 (4) keep a record of all receipts, disbursements, and transactions made on behalf of the
2565 principal;

2566 (5) cooperate with any person that has authority to make health care decisions for the
2567 principal to do what you know the principal reasonably expects or, if you do not know the
2568 principal's expectations, to act in the principal's best interest; and

2569 (6) attempt to preserve the principal's estate plan if you know the plan and preserving

2570 the plan is consistent with the principal's best interest.

2571 Termination of Agent's Authority

2572 You must stop acting on behalf of the principal if you learn of any event that terminates this
2573 power of attorney or your authority under this power of attorney. Events that terminate a power
2574 of attorney or your authority to act under a power of attorney include:

- 2575 (1) death of the principal;
- 2576 (2) the principal's revocation of the power of attorney or your authority;
- 2577 (3) the occurrence of a termination event stated in the power of attorney;
- 2578 (4) the purpose of the power of attorney is fully accomplished; or
- 2579 (5) if you are married to the principal, a legal action is filed with a court to end your
2580 marriage, or for your legal separation, unless the Special Instructions in this power of attorney
2581 state that such an action will not terminate your authority.

2582 Liability of Agent

2583 The meaning of the authority granted to you is defined in [~~Title 75, Chapter 9, Uniform Power
2584 of Attorney Act~~] Title 75A, Chapter 2, Uniform Power of Attorney Act. If you violate [~~Title
2585 75, Chapter 9, Uniform Power of Attorney Act~~] Title 75A, Chapter 2, Uniform Power of
2586 Attorney Act, or act outside the authority granted, you may be liable for any damages caused by
2587 your violation.

2588 If there is anything about this document or your duties that you do not understand, you should
2589 seek legal advice.

2590 Section 64. Section **75A-2-302**, which is renumbered from Section 75-9-302 is
2591 renumbered and amended to read:

2592 **[75-9-302]. 75A-2-302. Agent's certification.**

2593 The following optional form may be used by an agent to certify facts concerning a
2594 power of attorney.

2595 AGENT'S CERTIFICATION AS TO THE VALIDITY OF POWER
2596 OF ATTORNEY AND AGENT'S AUTHORITY

2597 State of _____

2598 [County] of _____

2599 I, _____ (Name of Agent), certify under

2600 penalty of perjury that _____ (Name of Principal)

2601 granted me authority as an agent or successor agent in a power of attorney dated

2602 _____.

2603 I further certify that to my knowledge:

2604 (1) the principal is alive and has not revoked the power of attorney or my authority to
2605 act under the power of attorney and the power of attorney and my authority to act under the
2606 power of attorney have not terminated;

2607 (2) if the power of attorney was drafted to become effective upon the happening of an
2608 event or contingency, the event or contingency has occurred;

2609 (3) if I was named as a successor agent, the prior agent is no longer able or willing to
2610 serve; and

2611 (4) _____

2612 _____

2613 _____

2614 _____

2615 (Insert other relevant statements)

2616 SIGNATURE AND ACKNOWLEDGMENT

2617 _____

2618 Agent's Signature Date

2619 _____

2620 Agent's Name Printed

2621 _____

2622 _____

2623 Agent's Address

2624 _____

2625 Agent's Telephone Number

2626 This document was acknowledged before me on _____,

2627 (Date)

2628 by _____.

2629 (Name of Agent)

2630 _____ (Seal, if any)

2631 Signature of Notary

2632 My commission expires: _____

2633 This document prepared by:

2634 _____

2635 Section 65. Section **75A-2-401**, which is renumbered from Section 75-9-401 is
2636 renumbered and amended to read:

2637 **Part 4. Applicability Provisions**

2638 ~~[75-9-401]~~. **75A-2-401**. **Uniformity of application and construction.**

2639 In applying and construing this uniform act, consideration shall be given to the need to
2640 promote uniformity of the law with respect to its subject matter among the states that enact [it]
2641 this uniform act.

2642 Section 66. Section **75A-2-402**, which is renumbered from Section 75-9-402 is
2643 renumbered and amended to read:

2644 ~~[75-9-402]~~. **75A-2-402**. **Relation to Electronic Signatures in Global and
2645 National Commerce Act.**

2646 This chapter modifies, limits, and supersedes the federal Electronic Signatures in
2647 Global and National Commerce Act, 15 U.S.C. Sec. 7001 et seq., but does not modify, limit, or
2648 supersede Section 101(c) of that act, 15 U.S.C. Sec. 7001(c), or authorize electronic delivery of
2649 any of the notices described in Section 103(b) of that act, 15 U.S.C. Sec. 7003(b).

2650 Section 67. Section **75A-2-403**, which is renumbered from Section 75-9-403 is
2651 renumbered and amended to read:

2652 ~~[75-9-403]~~. **75A-2-403**. **Effect on existing powers of attorney.**

2653 Except as otherwise provided:

2654 (1) this chapter applies to a power of attorney created before, on, or after May 10,
2655 2016;

2656 (2) this chapter applies to a judicial proceeding concerning a power of attorney
2657 commenced on or after May 10, 2016;

2658 (3) this chapter applies to a judicial proceeding concerning a power of attorney
2659 commenced before May 10, 2016, unless the court finds that application of a provision of this
2660 chapter would substantially interfere with the effective conduct of the judicial proceeding or
2661 prejudice the rights of a party, in which case that provision does not apply and the superseded
2662 law applies; and

2663 (4) an act done before May 10, 2016, is not affected by this chapter.

2664 Section 68. Section **75A-3-101**, which is renumbered from Section 75-2a-103 is
2665 renumbered and amended to read:

2666 **CHAPTER 3. HEALTH CARE DECISIONS**

2667 **Part 1. General Provisions**

2668 ~~[75-2a-103].~~ **75A-3-101. Definitions.**

2669 As used in this chapter:

2670 (1) "Adult" means an individual who is:

2671 (a) at least 18 years old; or

2672 (b) an emancipated minor.

2673 (2) "Advance health care directive":

2674 (a) includes:

2675 (i) a designation of an agent to make health care decisions for an adult when the adult
2676 cannot make or communicate health care decisions; or

2677 (ii) an expression of preferences about health care decisions;

2678 (b) may take one of the following forms:

2679 (i) a written document, voluntarily executed by an adult in accordance with the
2680 requirements of this chapter; or

2681 (ii) a witnessed oral statement, made in accordance with the requirements of this
2682 chapter; and

2683 (c) does not include a POLST order.

2684 (3) "Agent" means an adult designated in an advance health care directive to make
2685 health care decisions for the declarant.

2686 (4) "APRN" means an individual who is:

2687 (a) certified or licensed as an advance practice registered nurse under Subsection
2688 **58-31b-301(2)(e)**;

2689 (b) an independent practitioner;

2690 (c) acting under a consultation and referral plan with a physician; and

2691 (d) acting within the scope of practice for that individual, as provided by law, rule, and
2692 specialized certification and training in that individual's area of practice.

2693 (5) "Best interest" means that the benefits to the person resulting from a treatment

- 2694 outweigh the burdens to the person resulting from the treatment, taking into account:
- 2695 (a) the effect of the treatment on the physical, emotional, and cognitive functions of the
2696 person;
- 2697 (b) the degree of physical pain or discomfort caused to the person by the treatment or
2698 the withholding or withdrawal of treatment;
- 2699 (c) the degree to which the person's medical condition, the treatment, or the
2700 withholding or withdrawal of treatment, result in a severe and continuing impairment of the
2701 dignity of the person by subjecting the person to humiliation and dependency;
- 2702 (d) the effect of the treatment on the life expectancy of the person;
- 2703 (e) the prognosis of the person for recovery with and without the treatment;
- 2704 (f) the risks, side effects, and benefits of the treatment, or the withholding or
2705 withdrawal of treatment; and
- 2706 (g) the religious beliefs and basic values of the person receiving treatment, to the extent
2707 these may assist the decision maker in determining the best interest.
- 2708 (6) "Capacity to appoint an agent" means that the adult understands the consequences
2709 of appointing a particular person as agent.
- 2710 (7) "Child" means the same as that term is defined in Section 75-1-201.
- 2711 (8) "Court" means the same as that term is defined in Section 75-1-201.
- 2712 ~~(7)~~ (9) "Declarant" means an adult who has completed and signed or directed the
2713 signing of an advance health care directive.
- 2714 ~~(8)~~ (10) "Default surrogate" means the adult who may make decisions for an
2715 individual when either:
- 2716 (a) an agent or guardian has not been appointed; or
- 2717 (b) an agent is not able, available, or willing to make decisions for an adult.
- 2718 ~~(9)~~ (11) "Emergency medical services provider" means a person that is licensed,
2719 designated, or certified under Title 26B, Chapter 4, Part 1, Utah Emergency Medical Services
2720 System.
- 2721 (12) "Estate" means the same as that term is defined in Section 75-1-201.
- 2722 ~~(10)~~ (13) "Generally accepted health care standards":
- 2723 (a) is defined only for the purpose of:
- 2724 (i) this chapter and does not define the standard of care for any other purpose under

2725 Utah law; and
2726 (ii) enabling health care providers to interpret the statutory form set forth in Section
2727 ~~[75-2a-117]~~ [75A-3-303](#); and
2728 (b) means the standard of care that justifies a provider in declining to provide life
2729 sustaining care because the proposed life sustaining care:
2730 (i) will not prevent or reduce the deterioration in the health or functional status of an
2731 individual;
2732 (ii) will not prevent the impending death of an individual; or
2733 (iii) will impose more burden on the individual than any expected benefit to the
2734 individual.
2735 (14) "Guardian" means the same as that term is defined in Section [75-1-201](#).
2736 ~~[(11)]~~ (15) "Health care" means any care, treatment, service, or procedure to improve,
2737 maintain, diagnose, or otherwise affect an individual's physical or mental condition.
2738 ~~[(12)]~~ (16) "Health care decision":
2739 (a) means a decision about an adult's health care made by, or on behalf of, an adult, that
2740 is communicated to a health care provider;
2741 (b) includes:
2742 (i) selection and discharge of a health care provider and a health care facility;
2743 (ii) approval or disapproval of diagnostic tests, procedures, programs of medication,
2744 and orders not to resuscitate; and
2745 (iii) directions to provide, withhold, or withdraw artificial nutrition and hydration and
2746 all other forms of health care; and
2747 (c) does not include decisions about an adult's financial affairs or social interactions
2748 other than as indirectly affected by the health care decision.
2749 ~~[(13)]~~ (17) "Health care decision making capacity" means an adult's ability to make an
2750 informed decision about receiving or refusing health care, including:
2751 (a) the ability to understand the nature, extent, or probable consequences of health
2752 status and health care alternatives;
2753 (b) the ability to make a rational evaluation of the burdens, risks, benefits, and
2754 alternatives of accepting or rejecting health care; and
2755 (c) the ability to communicate a decision.

2756 [~~(14)~~] (18) "Health care facility" means:

2757 (a) a health care facility as defined in Title 26B, Chapter 2, Part 2, Health Care Facility
2758 Licensing and Inspection; and

2759 (b) private offices of physicians, dentists, and other health care providers licensed to
2760 provide health care under Title 58, Occupations and Professions.

2761 [~~(15)~~] (19) "Health care provider" means the same as that term is defined in Section
2762 [78B-3-403](#), except that "health care provider" does not include an emergency medical services
2763 provider.

2764 [~~(16)~~] (20) (a) "Life sustaining care" means any medical intervention, including
2765 procedures, administration of medication, or use of a medical device, that maintains life by
2766 sustaining, restoring, or supplanting a vital function.

2767 (b) "Life sustaining care" does not include care provided for the purpose of keeping an
2768 individual comfortable.

2769 [~~(17)~~] (21) "Minor" means an individual who:

2770 (a) is under 18 years old; and

2771 (b) is not an emancipated minor.

2772 (22) "Parent" means the same as that term is defined in Section [75-1-201](#).

2773 (23) "Personal representative" means the same as that term is defined in Section
2774 [75-1-201](#).

2775 [~~(18)~~] (24) "Physician" means a physician and surgeon or osteopathic surgeon licensed
2776 under Title 58, Chapter 67, Utah Medical Practice Act or Chapter 68, Utah Osteopathic
2777 Medical Practice Act.

2778 [~~(19)~~] (25) "Physician assistant" means an individual licensed as a physician assistant
2779 under Title 58, Chapter 70a, Utah Physician Assistant Act.

2780 [~~(20)~~] (26) "POLST order" means an order, on a form designated by the Department of
2781 Health and Human Services under Section [~~75-2a-106~~] [75A-3-106](#), that gives direction to
2782 health care providers, health care facilities, and emergency medical services providers
2783 regarding the specific health care decisions of the individual to whom the order relates.

2784 [~~(21)~~] (27) "Reasonably available" means:

2785 (a) readily able to be contacted without undue effort; and

2786 (b) willing and able to act in a timely manner considering the urgency of the

2787 circumstances.

2788 (28) "State" means the same as that term is defined in Section [75-1-201](#).

2789 ~~[(22)]~~ (29) "Substituted judgment" means the standard to be applied by a surrogate
2790 when making a health care decision for an adult who previously had the capacity to make
2791 health care decisions, which requires the surrogate to consider:

2792 (a) specific preferences expressed by the adult:

2793 (i) when the adult had the capacity to make health care decisions; and

2794 (ii) at the time the decision is being made;

2795 (b) the surrogate's understanding of the adult's health care preferences;

2796 (c) the surrogate's understanding of what the adult would have wanted under the
2797 circumstances; and

2798 (d) to the extent that the preferences described in Subsections (22)(a) through (c) are
2799 unknown, the best interest of the adult.

2800 ~~[(23)]~~ (30) "Surrogate" means a health care decision maker who is:

2801 (a) an appointed agent;

2802 (b) a default surrogate under the provisions of Section ~~[75-2a-108]~~ [75A-3-203](#); or

2803 (c) a guardian.

2804 (31) "Trust" means the same as that term is defined in Section [75-1-201](#).

2805 (32) "Will" means the same as that term is defined in Section [75-1-201](#).

2806 Section 69. Section **75A-3-102**, which is renumbered from Section 75-2a-102 is
2807 renumbered and amended to read:

2808 ~~[75-2a-102]~~. **75A-3-102. Intent statement.**

2809 (1) The Legislature finds:

2810 (a) developments in health care technology make possible many alternatives for
2811 treating medical conditions and make possible the unnatural prolongation of life;

2812 (b) an adult should have the clear legal choice to:

2813 (i) accept or reject health care, even if rejecting health care will result in death sooner
2814 than death would be expected to occur if rejected health care were started or continued;

2815 (ii) be spared unwanted procedures; and

2816 (iii) be permitted to die with a maximum of dignity and function and a minimum of
2817 pain;

2818 (c) Utah law should:
 2819 (i) provide an adult with a legal tool to designate a health care agent and express
 2820 preferences about health care options to go into effect only after the adult loses the ability to
 2821 make or communicate health care decisions, including decisions about end-of-life care; and

2822 (ii) promote an advance health care directive system that can be administered
 2823 effectively within the health care system;

2824 (d) surrogate decisions made on behalf of an adult who previously had capacity to
 2825 make health care decisions, but who has lost health care decision making capacity should be
 2826 based on:

2827 (i) input from the incapacitated adult, to the extent possible under the circumstances;

2828 (ii) specific preferences expressed by the adult prior to the loss of health care decision
 2829 making capacity;

2830 (iii) the surrogate's understanding of the adult's health care preferences; and

2831 (iv) the surrogate's understanding of what the adult would have wanted under the
 2832 circumstances; and

2833 (e) surrogate decisions made on behalf of an adult who has never had health care
 2834 decision making capacity should be made on the basis of the adult's best interest.

2835 (2) In recognition of the dignity and privacy that each adult is entitled to expect, and to
 2836 protect the right of an adult to refuse to be treated without the adult's consent, the Legislature
 2837 declares that this state recognizes the right to make binding advance health care directives
 2838 directing health care providers to:

2839 (a) provide life sustaining medically indicated health care;

2840 (b) withhold or withdraw health care; or

2841 (c) provide health care only to the extent set forth in an advance health care directive.

2842 Section 70. Section **75A-3-103**, which is renumbered from Section 75-2a-122 is
 2843 renumbered and amended to read:

2844 ~~[75-2a-122].~~ **75A-3-103. Effect of chapter.**

2845 ~~[The Advance Health Care Directive Act created in this]~~ This chapter does not:

2846 (1) create a presumption concerning the intention of an adult who has not made or who
 2847 has revoked an advance health care directive;

2848 (2) authorize mercy killing, assisted suicide, or euthanasia; or

2849 (3) authorize the provision, withholding, or withdrawal of health care, to the extent
2850 prohibited by the laws of this state.

2851 Section 71. Section **75A-3-104**, which is renumbered from Section 75-2a-124 is
2852 renumbered and amended to read:

2853 ~~[75-2a-124]~~. **75A-3-104. Provisions cumulative with existing law.**

2854 The provisions of this chapter are cumulative with existing law regarding a person's
2855 right to consent or refuse to consent to medical treatment and do not impair any existing rights
2856 or responsibilities that a health care provider, a person, including a minor or incapacitated
2857 person, or a person's family or surrogate may have in regard to the provision, withholding or
2858 withdrawal of life sustaining procedures under the common law or statutes of the state.

2859 Section 72. Section **75A-3-105**, which is renumbered from Section 75-2a-125 is
2860 renumbered and amended to read:

2861 ~~[75-2a-125]~~. **75A-3-105. Severability.**

2862 (1) If any one or more provision, section, subsection, sentence, clause, phrase, or word
2863 of this chapter, or the application of this chapter to any person or circumstance, is found to be
2864 unconstitutional, the same is hereby declared to be severable and the balance of this chapter
2865 shall remain effective notwithstanding such unconstitutionality.

2866 (2) The Legislature hereby declares that it would have passed this chapter, and each
2867 provision, section, subsection, sentence, clause, phrase, or word of this chapter, irrespective of
2868 the fact that any one or more provision, section, subsection, sentence, clause, phrase, or word
2869 be declared unconstitutional.

2870 Section 73. Section **75A-3-106**, which is renumbered from Section 75-2a-106 is
2871 renumbered and amended to read:

2872 ~~[75-2a-106]~~. **75A-3-106. Emergency medical services -- POLST order.**

2873 (1) A POLST order may be created by or on behalf of a person as described in this
2874 section.

2875 (2) A POLST order shall, in consultation with the person authorized to consent to the
2876 order pursuant to this section, be prepared by:

2877 (a) the physician, APRN, or, subject to Subsection (11), physician assistant of the
2878 person to whom the POLST order relates; or

2879 (b) a health care provider who:

2880 (i) is acting under the supervision of a person described in Subsection (2)(a); and
2881 (ii) is:
2882 (A) a nurse, licensed under Title 58, Chapter 31b, Nurse Practice Act;
2883 (B) a physician assistant, licensed under Title 58, Chapter 70a, Utah Physician
2884 Assistant Act;
2885 (C) a mental health professional, licensed under Title 58, Chapter 60, Mental Health
2886 Professional Practice Act; or
2887 (D) another health care provider, designated by rule as described in Subsection (10).
2888 (3) A POLST order shall be signed:
2889 (a) personally, by the physician, APRN, or, subject to Subsection (11), physician
2890 assistant of the person to whom the POLST order relates; and
2891 (b) (i) if the person to whom the POLST order relates is an adult with health care
2892 decision making capacity, by:
2893 (A) the person; or
2894 (B) an adult who is directed by the person to sign the POLST order on behalf of the
2895 person;
2896 (ii) if the person to whom the POLST order relates is an adult who lacks health care
2897 decision making capacity, by:
2898 (A) the surrogate with the highest priority under Section ~~[75-2a-111]~~ [75A-3-206](#);
2899 (B) the majority of the class of surrogates with the highest priority under Section
2900 ~~[75-2a-111]~~ [75A-3-206](#); or
2901 (C) a person directed to sign the POLST order by, and on behalf of, the persons
2902 described in Subsection (3)(b)(ii)(A) or (B); or
2903 (iii) if the person to whom the POLST order relates is a minor, by a parent or guardian
2904 of the minor.
2905 (4) If a POLST order relates to a minor and directs that life sustaining treatment be
2906 withheld or withdrawn from the minor, the order shall include a certification by two physicians
2907 that, in their clinical judgment, an order to withhold or withdraw life sustaining treatment is in
2908 the best interest of the minor.
2909 (5) A POLST order:
2910 (a) shall be in writing, on a form designated by the Department of Health and Human

2911 Services;

2912 (b) shall state the date on which the POLST order was made;

2913 (c) may specify the level of life sustaining care to be provided to the person to whom
2914 the order relates; and

2915 (d) may direct that life sustaining care be withheld or withdrawn from the person to
2916 whom the order relates.

2917 (6) A health care provider or emergency medical service provider, licensed or certified
2918 under Title 26B, Chapter 4, Part 1, Utah Emergency Medical Services System, is immune from
2919 civil or criminal liability, and is not subject to discipline for unprofessional conduct, for:

2920 (a) complying with a POLST order in good faith; or

2921 (b) providing life sustaining treatment to a person when a POLST order directs that the
2922 life sustaining treatment be withheld or withdrawn.

2923 (7) To the extent that the provisions of a POLST order described in this section conflict
2924 with the provisions of an advance health care directive made under Section ~~[75-2a-107]~~
2925 [75A-3-301](#), the provisions of the POLST order take precedence.

2926 (8) An adult, or a parent or guardian of a minor, may revoke a POLST order by:

2927 (a) orally informing emergency service personnel;

2928 (b) writing "void" across the POLST order form;

2929 (c) burning, tearing, or otherwise destroying or defacing:

2930 (i) the POLST order form; or

2931 (ii) a bracelet or other evidence of the POLST order;

2932 (d) asking another adult to take the action described in this Subsection (8) on the
2933 person's behalf;

2934 (e) signing or directing another adult to sign a written revocation on the person's
2935 behalf;

2936 (f) stating, in the presence of an adult witness, that the person wishes to revoke the
2937 order; or

2938 (g) completing a new POLST order.

2939 (9) (a) Except as provided in Subsection (9)(c), a surrogate for an adult who lacks
2940 health care decision making capacity may only revoke a POLST order if the revocation is
2941 consistent with the substituted judgment standard.

2942 (b) Except as provided in Subsection (9)(c), a surrogate who has authority under this
2943 section to sign a POLST order may revoke a POLST order, in accordance with Subsection
2944 (9)(a), by:

2945 (i) signing a written revocation of the POLST order; or

2946 (ii) completing and signing a new POLST order.

2947 (c) A surrogate may not revoke a POLST order during the period of time beginning
2948 when an emergency service provider is contacted for assistance, and ending when the
2949 emergency ends.

2950 (10) (a) The Department of Health and Human Services shall make rules, in
2951 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to:

2952 (i) create the forms and systems described in this section; and

2953 (ii) develop uniform instructions for the form established in Section ~~[75-2a-117]~~

2954 [75A-3-303](#).

2955 (b) The Department of Health and Human Services may make rules, in accordance
2956 with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to designate health care
2957 professionals, in addition to those described in Subsection (2)(b)(ii), who may prepare a
2958 POLST order.

2959 (c) The Department of Health and Human Services may assist others with training of
2960 health care professionals regarding this chapter.

2961 (11) A physician assistant may not prepare or sign a POLST order, unless the physician
2962 assistant is permitted to prepare or sign the POLST order under the physician assistant's
2963 delegation of services agreement~~[, as defined in Section 58-70a-102]~~.

2964 (12) (a) Notwithstanding any other provision of this section:

2965 (i) the provisions of Title 46, Chapter 4, Uniform Electronic Transactions Act, apply to
2966 any signature required on the POLST order; and

2967 (ii) a verbal confirmation satisfies the requirement for a signature from an individual
2968 under Subsection (3)(b)(ii) or (iii), if:

2969 (A) requiring the individual described in Subsection (3)(b)(i)(B), (ii), or (iii) to sign the
2970 POLST order in person or electronically would require significant difficulty or expense; and

2971 (B) a licensed health care provider witnesses the verbal confirmation and signs the
2972 POLST order attesting that the health care provider witnessed the verbal confirmation.

2973 (b) The health care provider described in Subsection (12)(a)(ii)(B):
 2974 (i) may not be the same individual who signs the POLST order under Subsection
 2975 (3)(a); and
 2976 (ii) shall verify, in accordance with HIPAA as defined in Section [26B-3-126](#), the
 2977 identity of the individual who is providing the verbal confirmation.

2978 Section 74. Section **75A-3-107**, which is renumbered from Section 75-2a-120 is
 2979 renumbered and amended to read:

2980 ~~[75-2a-120]~~. **75A-3-107. Judicial relief.**

2981 A district court may enjoin or direct a health care decision, or order other equitable
 2982 relief based on a petition filed by:

- 2983 (1) a patient;
- 2984 (2) an agent of a patient;
- 2985 (3) a guardian of a patient;
- 2986 (4) a default surrogate of a patient;
- 2987 (5) a health care provider of a patient;
- 2988 (6) a health care facility providing care for a patient; or
- 2989 (7) an individual who meets the requirements of Section ~~[75-2a-108]~~ [75A-3-203](#).

2990 Section 75. Section **75A-3-201**, which is renumbered from Section 75-2a-104 is
 2991 renumbered and amended to read:

2992 **Part 2. Health Care Decisions for Adult**

2993 ~~[75-2a-104]~~. **75A-3-201. Capacity to make health care decisions --**
 2994 **Presumption -- Overcoming presumption.**

- 2995 (1) An adult is presumed to have:
 - 2996 (a) health care decision making capacity; and
 - 2997 (b) capacity to make or revoke an advance health care directive.
- 2998 (2) To overcome the presumption of capacity described in Subsection (1)(a), a
 2999 physician, an APRN, or, subject to Subsection (6), a physician assistant who has personally
 3000 examined the adult and assessed the adult's health care decision making capacity must:
 - 3001 (a) find that the adult lacks health care decision making capacity;
 - 3002 (b) record the finding in the adult's medical chart including an indication of whether
 3003 the adult is likely to regain health care decision making capacity; and

3004 (c) make a reasonable effort to communicate the determination to:
3005 (i) the adult;
3006 (ii) other health care providers or health care facilities that the person who makes the
3007 finding would routinely inform of such a finding; and
3008 (iii) if the adult has a surrogate, any known surrogate.
3009 (3) (a) An adult who is found to lack health care decision making capacity in
3010 accordance with Subsection (2) may, at any time, challenge the finding by:
3011 (i) submitting to a health care provider a written notice stating that the adult disagrees
3012 with the physician's finding; or
3013 (ii) orally informing the health care provider that the adult disagrees with the finding.
3014 (b) A health care provider who is informed of a challenge under Subsection (3)(a),
3015 shall, if the adult has a surrogate, promptly inform the surrogate of the adult's challenge.
3016 (c) A surrogate informed of a challenge to a finding under this section, or the adult if
3017 no surrogate is acting on the adult's behalf, shall inform the following of the adult's challenge:
3018 (i) any other health care providers involved in the adult's care; and
3019 (ii) the health care facility, if any, in which the adult is receiving care.
3020 (d) Unless otherwise ordered by a court, a finding, under Subsection (2), that the adult
3021 lacks health care decision making capacity, is not in effect if the adult challenges the finding
3022 under Subsection (3)(a).
3023 (e) If an adult does not challenge the finding described in Subsection (2), the health
3024 care provider and health care facility may rely on a surrogate, pursuant to the provisions of this
3025 chapter, to make health care decisions for the adult.
3026 (4) A health care provider or health care facility that relies on a surrogate to make
3027 decisions on behalf of an adult has an ongoing obligation to consider whether the adult
3028 continues to lack health care decision making capacity.
3029 (5) If at any time a health care provider finds, based on an examination and assessment,
3030 that the adult has regained health care decision making capacity, the health care provider shall
3031 record the results of the assessment in the adult's medical record, and the adult can direct the
3032 adult's own health care.
3033 (6) A physician assistant may not make a finding described in Subsection (2), unless
3034 the physician assistant is permitted to make the finding under the physician assistant's

3035 delegation of services agreement[, as defined in Section ~~58-70a-102~~].

3036 Section 76. Section **75A-3-202**, which is renumbered from Section 75-2a-109 is
3037 renumbered and amended to read:

3038 ~~[75-2a-109]~~. **75A-3-202. Effect of current health care preferences --**
3039 **Health care decision making.**

3040 (1) (a) An adult with health care decision making capacity retains the right to make
3041 health care decisions as long as the adult has health care decision making capacity [~~as defined~~
3042 ~~in Section 75-2a-103~~].

3043 (b) For purposes of this chapter, the inability to communicate through speech does not
3044 mean that the adult lacks health care decision making capacity.

3045 (2) An adult's current health care decisions, however expressed or indicated, always
3046 supersedes an adult's prior decisions or health care directives.

3047 (3) Unless otherwise directed in an advance health care directive, an advance health
3048 care directive or the authority of a surrogate to make health care decisions on behalf of an
3049 adult:

3050 (a) is effective only after a physician, physician assistant, or APRN makes a
3051 determination of incapacity as provided in Section [~~75-2a-104~~] 75A-3-201;

3052 (b) remains in effect during any period of time in which the declarant lacks capacity to
3053 make health care decisions; and

3054 (c) ceases to be effective when:

3055 (i) a declarant disqualifies a surrogate or revokes the advance health care directive;

3056 (ii) a health care provider finds that the declarant has health care decision making
3057 capacity;

3058 (iii) a court issues an order invalidating a health care directive; or

3059 (iv) the declarant has challenged the finding of incapacity under the provisions of
3060 Subsection [~~75-2a-104(3)~~] 75A-3-201(3).

3061 Section 77. Section **75A-3-203**, which is renumbered from Section 75-2a-108 is
3062 renumbered and amended to read:

3063 ~~[75-2a-108]~~. **75A-3-203. Default surrogates.**

3064 (1) (a) Any member of the class described in Subsection (1)(b) may act as an adult's
3065 surrogate if:

- 3066 (i) (A) the adult has not appointed an agent;
- 3067 (B) an appointed agent is not reasonably available; or
- 3068 (C) a guardian has not been appointed; and
- 3069 (ii) the member of the class described in Subsection (1)(b) is:
- 3070 (A) over 18 years [~~of age~~] old;
- 3071 (B) has health care decision making capacity;
- 3072 (C) is reasonably available; and
- 3073 (D) has not been disqualified by the adult or a court.
- 3074 (b) Except as provided in Subsection (1)(a), and subject to Subsection (1)(c), the
- 3075 following classes of the adult's family, in descending order of priority, may act as the adult's
- 3076 surrogate:
- 3077 (i) the adult's spouse, unless the adult is divorced or legally separated; or
- 3078 (ii) the following family members:
- 3079 (A) a child;
- 3080 (B) a parent;
- 3081 (C) a sibling;
- 3082 (D) a grandchild; or
- 3083 (E) a grandparent.
- 3084 (c) A person described in Subsection (1)(b), may not direct an adult's care if a person of
- 3085 a higher priority class is able and willing to act as a surrogate for the adult.
- 3086 (d) A court may disqualify a person described in Subsection (1)(b) from acting as a
- 3087 surrogate if the court finds that the person has acted in a manner that is inconsistent with the
- 3088 position of trust in which a surrogate is placed.
- 3089 (2) If the family members designated in Subsection (1)(b) are not reasonably available
- 3090 to act as a surrogate, a person who is 18 years [~~of age~~] old or older, other than those designated
- 3091 in Subsection (1) may act as a surrogate if the person:
- 3092 (a) has health care decision making capacity;
- 3093 (b) has exhibited special care and concern for the patient;
- 3094 (c) knows the patient and the patient's personal values; and
- 3095 (d) is reasonably available to act as a surrogate.
- 3096 (3) The surrogate shall communicate the surrogate's assumption of authority as

3097 promptly as practicable to the members of a class who:

3098 (a) have an equal or higher priority and are not acting as surrogate; and

3099 (b) can be readily contacted.

3100 (4) A health care provider shall comply with the decision of a majority of the members

3101 of the highest priority class who have communicated their views to the provider if:

3102 (a) more than one member of the highest priority class assumes authority to act as

3103 default surrogate;

3104 (b) the members of the class do not agree on a health care decision; and

3105 (c) the health care provider is informed of the disagreement among the members of the

3106 class.

3107 (5) (a) An adult may at any time disqualify a default surrogate, including a member of

3108 the adult's family, from acting as the adult's surrogate by:

3109 (i) a signed writing;

3110 (ii) personally informing a witness of the disqualification; or

3111 (iii) informing the surrogate of the disqualification.

3112 (b) Disqualification of a surrogate is effective even if the adult has been found to lack

3113 health care decision making capacity.

3114 (6) If reasonable doubt exists regarding the status of an adult claiming the right to act

3115 as a default surrogate, the health care provider may:

3116 (a) require the person to provide a sworn statement giving facts and circumstances

3117 reasonably sufficient to establish the claimed authority; or

3118 (b) seek a ruling from the court under Section ~~[75-2a-120]~~ [75A-3-107](#).

3119 (7) A health care provider may seek a ruling from a court pursuant to Section

3120 ~~[75-2a-120]~~ [75A-3-107](#) if the health care provider has evidence that a surrogate is making

3121 decisions that are inconsistent with an adult patient's wishes or preferences.

3122 Section 78. Section **75A-3-204**, which is renumbered from Section 75-2a-110 is

3123 renumbered and amended to read:

3124 ~~[75-2a-110]~~. **75A-3-204. Surrogate decision making -- Scope of authority.**

3125 (1) A surrogate acting under the authority of [~~either Section 75-2a-107 or 75-2a-108]~~

3126 Section 75A-3-203 or 75A-3-301 shall make health care decisions in accordance with:

3127 (a) the adult's current preferences, to the extent possible;

- 3128 (b) the adult's written or oral health care directions, if any; or
- 3129 (c) the substituted judgment standard.

3130 (2) A surrogate acting under the authority of [~~Sections 75-2a-107 and 75-2a-108~~]
3131 Section 75A-3-203 or 75A-3-301:

3132 (a) may not admit the adult to a licensed health care facility for long-term custodial
3133 placement other than for assessment, rehabilitative, or respite care over the objection of the
3134 adult; and

3135 (b) may make health care decisions, including decisions to terminate life sustaining
3136 treatment for the adult patient in accordance with Subsection (1).

3137 (3) A surrogate acting under authority of this section is not subject to civil or criminal
3138 liability or claims of unprofessional conduct for surrogate health care decisions made:

3139 (a) in accordance with this section; and

3140 (b) in good faith.

3141 Section 79. Section **75A-3-205**, which is renumbered from Section 75-2a-112 is
3142 renumbered and amended to read:

3143 ~~[75-2a-112]~~. **75A-3-205. Health care decisions by guardian.**

3144 (1) A court-appointed guardian shall comply with an adult's advance health care
3145 directive and may not revoke the adult's advance health care directive unless the court, for
3146 cause, expressly revokes the adult's directive.

3147 (2) A health care decision of an agent takes precedence over that of a guardian, in the
3148 absence of a court order to the contrary.

3149 (3) Except as provided in Subsections (1) and (2), a health care decision made by a
3150 guardian for the adult patient is effective without judicial approval.

3151 (4) A guardian is not subject to civil or criminal liability or to claims of unprofessional
3152 conduct for a surrogate health care decision made:

3153 (a) in good faith; and

3154 (b) in accordance with Section [~~75-2a-110~~] 75A-3-204.

3155 Section 80. Section **75A-3-206**, which is renumbered from Section 75-2a-111 is
3156 renumbered and amended to read:

3157 ~~[75-2a-111]~~. **75A-3-206. Priority of decision makers.**

3158 (1) The following is the order of priority of those authorized to make health care

3159 decisions on behalf of an adult who has been found to lack health care decision making
3160 capacity under Section ~~[75-2a-104]~~ [75A-3-201](#):

3161 (a) a health care agent appointed by an adult under the provisions of Section
3162 ~~[75-2a-107]~~ [75A-3-301](#) unless the agent has been disqualified by:

3163 (i) the adult; or

3164 (ii) a court of law;

3165 (b) a court-appointed guardian; or

3166 (c) the highest priority default surrogate acting under authority of Section ~~[75-2a-108]~~

3167 [75A-3-203](#).

3168 (2) A health care provider or health care facility obtaining consent for health care from
3169 a surrogate shall make a reasonable effort to identify and obtain consent from the surrogate
3170 with the highest priority.

3171 Section 81. Section **75A-3-207**, which is renumbered from Section 75-2a-115 is
3172 renumbered and amended to read:

3173 ~~[75-2a-115]~~. **75A-3-207. Notification to health care provider --**

3174 **Obligations of health care providers -- Liability.**

3175 (1) It is the responsibility of the declarant or surrogate, to the extent that the
3176 responsibility is not assigned to a health care provider or health care facility by state or federal
3177 law, to notify or provide for notification to a health care provider and a health care facility of:

3178 (a) the existence of a health care directive;

3179 (b) the revocation of a health care directive;

3180 (c) the existence or revocation of appointment of an agent or default surrogate;

3181 (d) the disqualification of a default surrogate; or

3182 (e) the appointment or revocation of appointment of a guardian.

3183 (2) (a) A health care provider or health care facility is not subject to civil or criminal
3184 liability or to claims of unprofessional conduct for failing to act upon a health care directive, a
3185 revocation of a health care directive, or a disqualification of a surrogate until the health care
3186 provider or health care facility has received an oral directive from an adult or a copy of a
3187 written directive or revocation of the health care directive, or the disqualification of the
3188 surrogate.

3189 (b) A health care provider and health care facility that is notified under Subsection (1)

3190 shall include in the adult patient's medical record:

3191 (i) the health care directive or a copy of it, a revocation of a health care directive, or a
3192 disqualification of a surrogate; and

3193 (ii) the date, time, and place in which any written or oral notice of the document
3194 described in this Subsection (2)(b) is received.

3195 (3) A health care provider or health care facility acting in good faith and in accordance
3196 with generally accepted health care standards is not subject to civil or criminal liability or to
3197 discipline for unprofessional conduct for:

3198 (a) complying with a health care decision made by an adult with health care decision
3199 making capacity;

3200 (b) complying with a health care decision made by a surrogate apparently having
3201 authority to make a health care decision for a person, including a decision to withhold or
3202 withdraw health care;

3203 (c) declining to comply with a health care decision of a surrogate based on a belief that
3204 the surrogate then lacked authority;

3205 (d) declining to comply with a health care decision of an adult who lacks decision
3206 making capacity;

3207 (e) seeking a judicial determination, or requiring a surrogate to obtain a judicial
3208 determination, under Section [~~75-2a-120~~] [75A-3-107](#) of:

3209 (i) the validity of a health care directive;

3210 (ii) the validity of directions from a surrogate or guardian;

3211 (iii) the decision making capacity of an adult who challenges a physician's finding of
3212 incapacity; or

3213 (iv) the authority of a guardian or surrogate; or

3214 (f) complying with an advance health care directive and assuming that the directive
3215 was valid when made, and has not been revoked or terminated.

3216 (4) (a) Health care providers and health care facilities shall:

3217 (i) cooperate with a person authorized under this chapter to make written directives
3218 concerning health care;

3219 (ii) unless the provisions of Subsection (4)(b) apply, comply with:

3220 (A) a health care decision of an adult; and

3221 (B) a health care decision made by the highest ranking surrogate then authorized to
3222 make health care decisions for an adult, to the same extent as if the decision had been made by
3223 the adult;

3224 (iii) before implementing a health care decision made by a surrogate, make a
3225 reasonable attempt to communicate to the adult on whose behalf the decision is made:

3226 (A) the decision made; and

3227 (B) the identity of the surrogate making the decision.

3228 (b) A health care provider or health care facility may decline to comply with a health
3229 care decision if:

3230 (i) in the opinion of the health care provider:

3231 (A) the adult who made the decision lacks health care decision making capacity;

3232 (B) the surrogate who made the decision lacks health care decision making capacity;

3233 (C) the health care provider has evidence that the surrogate's instructions are
3234 inconsistent with the adult's health care instructions, or, for a person who has always lacked
3235 health care decision making capacity, that the surrogate's instructions are inconsistent with the
3236 best interest of the adult; or

3237 (D) there is reasonable doubt regarding the status of a person claiming the right to act
3238 as a default surrogate, in which case the health care provider shall comply with Subsection
3239 ~~[75-2a-108(6)]~~ [75A-3-203\(6\)](#); or

3240 (ii) the health care provider declines to comply for reasons of conscience.

3241 (c) A health care provider or health care facility that declines to comply with a health
3242 care decision in accordance with Subsection (4)(b) must:

3243 (i) promptly inform the adult and any acting surrogate of the reason for refusing to
3244 comply with the health care decision;

3245 (ii) make a good faith attempt to resolve the conflict; and

3246 (iii) provide continuing care to the patient until the issue is resolved or until a transfer
3247 can be made to a health care provider or health care facility that will implement the requested
3248 instruction or decision.

3249 (d) A health care provider or health care facility that declines to comply with a health
3250 care instruction, after meeting the obligations set forth in Subsection (4)(c) may transfer the
3251 adult to a health care provider or health care facility that will carry out the requested health care

3252 decisions.

3253 (e) A health care facility may decline to follow a health care decision for reasons of
3254 conscience under Subsection (4)(b)(ii) if:

3255 (i) the health care decision is contrary to a policy of the facility that is expressly based
3256 on reasons of conscience;

3257 (ii) the policy was timely communicated to the adult and an adult's surrogate;

3258 (iii) the facility promptly informs the adult, if possible, and any surrogate then
3259 authorized to make decisions for the adult;

3260 (iv) the facility provides continuing care to the adult until a transfer can be made to a
3261 health care facility that will implement the requested instruction or decision; and

3262 (v) unless an adult or surrogate then authorized to make health care decisions for the
3263 adult refuses assistance, immediately make all reasonable efforts to assist in the transfer of the
3264 adult to another health care facility that will carry out the instructions or decisions.

3265 (5) A health care provider and health care facility:

3266 (a) may not require or prohibit the creation or revocation of an advance health care
3267 directive as a condition for providing health care; and

3268 (b) shall comply with all state and federal laws and regulations governing advance
3269 health care directives.

3270 Section 82. Section **75A-3-208**, which is renumbered from Section 75-2a-113 is
3271 renumbered and amended to read:

3272 ~~[75-2a-113]~~. **75A-3-208. Personal representative status.**

3273 A surrogate becomes a personal representative for an adult under the Health Insurance
3274 Portability and Accountability Act of 1996 when:

3275 (1) the adult has been found to lack health care decision making capacity under Section
3276 ~~[75-2a-104]~~ 75A-3-201;

3277 (2) the adult grants current authority to the surrogate either:

3278 (a) in writing; or

3279 (b) by other expression before a witness who is not the surrogate or agent; or

3280 (3) the court appoints a guardian authorized to make health care decisions on behalf of
3281 the adult.

3282 Section 83. Section **75A-3-301**, which is renumbered from Section 75-2a-107 is

3283 renumbered and amended to read:

3284 **Part 3. Advance Health Care Directive for Adult**

3285 ~~[75-2a-107]~~. **75A-3-301. Advance health care directive -- Appointment of**
3286 **agent -- Powers of agent.**

3287 (1) (a) An adult may make an advance health care directive in which the adult may:

3288 (i) appoint a health care agent or choose not to appoint a health care agent;

3289 (ii) give directions for the care of the adult after the adult loses health care decision
3290 making capacity;

3291 (iii) choose not to give directions;

3292 (iv) state conditions that must be met before life sustaining treatment may be withheld
3293 or withdrawn;

3294 (v) authorize an agent to consent to the adult's participation in medical research;

3295 (vi) nominate a guardian;

3296 (vii) authorize an agent to consent to organ donation;

3297 (viii) expand or limit the powers of a health care agent; and

3298 (ix) designate the agent's access to the adult's medical records.

3299 (b) An advance health care directive may be oral or written.

3300 (c) An advance health care directive shall be witnessed by a disinterested adult. The
3301 witness may not be:

3302 (i) the person who signed the directive on behalf of the declarant;

3303 (ii) related to the declarant by blood or marriage;

3304 (iii) entitled to any portion of the declarant's estate according to the laws of intestate
3305 succession of this state or under any will or codicil of the declarant;

3306 (iv) the beneficiary of any of the following that are held, owned, made, or established
3307 by, or on behalf of, the declarant:

3308 (A) a life insurance policy;

3309 (B) a trust;

3310 (C) a qualified plan;

3311 (D) a pay on death account; or

3312 (E) a transfer on death deed;

3313 (v) entitled to benefit financially upon the death of the declarant;

3314 (vi) entitled to a right to, or interest in, real or personal property upon the death of the
3315 declarant;

3316 (vii) directly financially responsible for the declarant's medical care;

3317 (viii) a health care provider who is:

3318 (A) providing care to the declarant; or

3319 (B) an administrator at a health care facility in which the declarant is receiving care; or

3320 (ix) the appointed agent.

3321 (d) The witness to an oral advance health care directive shall state the circumstances
3322 under which the directive was made.

3323 (2) An agent appointed under the provisions of this section may not be a health care
3324 provider for the declarant, or an owner, operator, or employee of the health care facility at
3325 which the declarant is receiving care unless the agent is related to the declarant by blood,
3326 marriage, or adoption.

3327 Section 84. Section **75A-3-302**, which is renumbered from Section 75-2a-105 is
3328 renumbered and amended to read:

3329 ~~[75-2a-105]~~. **75A-3-302. Capacity to complete an advance health care**
3330 **directive.**

3331 (1) An adult is presumed to have the capacity to complete an advance health care
3332 directive.

3333 (2) An adult who is found to lack health care decision making capacity under the
3334 provisions of Section ~~[75-2a-104]~~ 75A-3-201:

3335 (a) lacks the capacity to give an advance health care directive, including Part II of the
3336 form created in Section ~~[75-2a-117]~~ 75A-3-303, or any other substantially similar form
3337 expressing a health care preference; and

3338 (b) may retain the capacity to appoint an agent and complete Part I of the form created
3339 in Section ~~[75-2a-117]~~ 75A-3-303.

3340 (3) The following factors shall be considered by a health care provider, attorney, or
3341 court when determining whether an adult described in Subsection (2)(b) has retained the
3342 capacity to appoint an agent:

3343 (a) whether the adult has expressed over time an intent to appoint the same person as
3344 agent;

3345 (b) whether the choice of agent is consistent with past relationships and patterns of
3346 behavior between the adult and the prospective agent, or, if inconsistent, whether there is a
3347 reasonable justification for the change; and

3348 (c) whether the adult's expression of the intent to appoint the agent occurs at times
3349 when, or in settings where, the adult has the greatest ability to make and communicate
3350 decisions.

3351 Section 85. Section **75A-3-303**, which is renumbered from Section 75-2a-117 is
3352 renumbered and amended to read:

3353 ~~[75-2a-117]~~. **75A-3-303. Optional form for advance health care directive.**

3354 (1) The form created in Subsection (2), or a substantially similar form, is presumed
3355 valid under this chapter.

3356 (2) The following form is presumed valid under Subsection (1):

3357 Utah Advance Health Care Directive

3358 (Pursuant to Utah Code Section [~~75-2a-117~~] 75A-3-303)

3359 Part I: Allows you to name another person to make health care decisions for you when you
3360 cannot make decisions or speak for yourself.

3361 Part II: Allows you to record your wishes about health care in writing.

3362 Part III: Tells you how to revoke or change this directive.

3363 Part IV: Makes your directive legal.

3364 _____

3365 My Personal Information

3366 Name: _____

3367 Street Address: _____

3368 City, State, Zip Code:

3369 _____

3370 Telephone: _____ Cell Phone: _____

3371 Birth date: _____

3372 _____

3373 Part I: My Agent (Health Care Power of Attorney)

3374 A. No Agent

3375 If you do not want to name an agent: initial the box below, then go to Part II; do not name an

3376 agent in B or C below. No one can force you to name an agent.

3377 _____ I do not want to choose an agent.

3378 B. My Agent

3379 Agent's Name:

3380 _____

3381 Street Address:

3382 _____

3383 City, State, Zip Code:

3384 _____

3385 Home Phone: () _____ Cell Phone: () _____ Work Phone: () _____

3386 C. My Alternate Agent

3387 This person will serve as your agent if your agent, named above, is unable or unwilling to
3388 serve.

3389 Alternate Agent's Name:

3390 _____

3391 Street Address:

3392 _____

3393 City, State, Zip Code:

3394 _____

3395 Home Phone: () _____ Cell Phone: () _____ Work Phone: () _____

3396 D. Agent's Authority

3397 If I cannot make decisions or speak for myself (in other words, after my physician or another
3398 authorized provider finds that I lack health care decision making capacity under Section
3399 [~~75-2a-104~~] [75A-3-201](#) of the Advance Health Care Directive Act), my agent has the power to
3400 make any health care decision I could have made such as, but not limited to:

- 3401 • Consent to, refuse, or withdraw any health care. This may include care to prolong my life
- 3402 such as food and fluids by tube, use of antibiotics, CPR (cardiopulmonary resuscitation), and
- 3403 dialysis, and mental health care, such as convulsive therapy and psychoactive medications.

3404 This authority is subject to any limits in paragraph F of Part I or in Part II of this directive.

- 3405 • Hire and fire health care providers.
- 3406 • Ask questions and get answers from health care providers.

3407 • Consent to admission or transfer to a health care provider or health care facility, including a
3408 mental health facility, subject to any limits in paragraphs E and F of Part I.

3409 • Get copies of my medical records.

3410 • Ask for consultations or second opinions.

3411 My agent cannot force health care against my will, even if a physician has found that I lack
3412 health care decision making capacity.

3413 E. Other Authority

3414 My agent has the powers below ONLY IF I initial the "yes" option that precedes the statement.

3415 I authorize my agent to:

3416 YES _____ NO _____ Get copies of my medical records at any time, even when I can
3417 speak for myself.

3418 YES _____ NO _____ Admit me to a licensed health care facility, such as a hospital,
3419 nursing home, assisted living, or other facility for long-term placement other than convalescent
3420 or recuperative care.

3421 F. Limits/Expansion of Authority

3422 I wish to limit or expand the powers of my health care agent as follows:

3423 _____
3424 _____

3425 G. Nomination of Guardian

3426 Even though appointing an agent should help you avoid a guardianship, a guardianship may
3427 still be necessary. Initial the "YES" option if you want the court to appoint your agent or, if
3428 your agent is unable or unwilling to serve, your alternate agent, to serve as your guardian, if a
3429 guardianship is ever necessary.

3430 YES _____ NO _____

3431 I, being of sound mind and not acting under duress, fraud, or other undue influence, do hereby
3432 nominate my agent, or if my agent is unable or unwilling to serve, I hereby nominate my
3433 alternate agent, to serve as my guardian in the event that, after the date of this instrument, I
3434 become incapacitated.

3435 H. Consent to Participate in Medical Research

3436 YES _____ NO _____ I authorize my agent to consent to my participation in medical
3437 research or clinical trials, even if I may not benefit from the results.

3438 I. Organ Donation

3439 YES _____ NO _____ If I have not otherwise agreed to organ donation, my agent may
3440 consent to the donation of my organs for the purpose of organ transplantation.

3441

3442 Part II: My Health Care Wishes (Living Will)

3443 I want my health care providers to follow the instructions I give them when I am being treated,
3444 even if my instructions conflict with these or other advance directives. My health care
3445 providers should always provide health care to keep me as comfortable and functional as
3446 possible.

3447 Choose only one of the following options, numbered Option 1 through Option 4, by placing
3448 your initials before the numbered statement. Do not initial more than one option. If you do not
3449 wish to document end-of-life wishes, initial Option 4. You may choose to draw a line through
3450 the options that you are not choosing.

3451 Option 1

3452 _____ Initial

3453 I choose to let my agent decide. I have chosen my agent carefully. I have talked with my agent
3454 about my health care wishes. I trust my agent to make the health care decisions for me that I
3455 would make under the circumstances.

3456 Additional Comments:

3457

3458 Option 2

3459 _____ Initial

3460 I choose to prolong life. Regardless of my condition or prognosis, I want my health care team
3461 to try to prolong my life as long as possible within the limits of generally accepted health care
3462 standards.

3463 Other:

3464

3465 Option 3

3466 _____ Initial

3467 I choose not to receive care for the purpose of prolonging life, including food and fluids by
3468 tube, antibiotics, CPR, or dialysis being used to prolong my life. I always want comfort care

3469 and routine medical care that will keep me as comfortable and functional as possible, even if
3470 that care may prolong my life.

3471 If you choose this option, you must also choose either (a) or (b), below.

3472 _____ Initial

3473 (a) I put no limit on the ability of my health care provider or agent to withhold or withdraw
3474 life-sustaining care.

3475 If you selected (a), above, do not choose any options under (b).

3476 _____ Initial

3477 (b) My health care provider should withhold or withdraw life-sustaining care if at least one of
3478 the following initialed conditions is met:

3479 _____ I have a progressive illness that will cause death.

3480 _____ I am close to death and am unlikely to recover.

3481 _____ I cannot communicate and it is unlikely that my condition will improve.

3482 _____ I do not recognize my friends or family and it is unlikely that my condition will
3483 improve.

3484 _____ I am in a persistent vegetative state.

3485 Other:

3486 _____

3487 Option 4

3488 _____ Initial

3489 I do not wish to express preferences about health care wishes in this directive.

3490 Other:

3491 _____

3492 Additional instructions about your health care wishes:

3493 _____

3494 _____

3495 If you do not want emergency medical service providers to provide CPR or other life sustaining
3496 measures, you must work with a physician or APRN to complete an order that reflects your
3497 wishes on a form approved by the Utah Department of Health.

3498 Part III: Revoking or Changing a Directive

3499 I may revoke or change this directive by:

- 3500 1. Writing "void" across the form, or burning, tearing, or otherwise destroying or defacing this
- 3501 document or directing another person to do the same on my behalf;
- 3502 2. Signing a written revocation of the directive, or directing another person to sign a
- 3503 revocation on my behalf;
- 3504 3. Stating that I wish to revoke the directive in the presence of a witness who: is 18 years [of
- 3505 age] old or older; will not be appointed as my agent in a substitute directive; will not become a
- 3506 default surrogate if the directive is revoked; and signs and dates a written document confirming
- 3507 my statement; or
- 3508 4. Signing a new directive. (If you sign more than one Advance Health Care Directive, the
- 3509 most recent one applies.)

Part IV: Making My Directive Legal

3511 I sign this directive voluntarily. I understand the choices I have made and declare that I am
3512 emotionally and mentally competent to make this directive. My signature on this form revokes
3513 any living will or power of attorney form, naming a health care agent, that I have completed in
3514 the past.

3515 _____

3516 Date

3517 _____

3518 Signature

3519 _____

3520 City, County, and State of Residence

3521 I have witnessed the signing of this directive, I am 18 years [of age] old or older, and I am not:

- 3522 1. related to the declarant by blood or marriage;
- 3523 2. entitled to any portion of the declarant's estate according to the laws of intestate succession
- 3524 of any state or jurisdiction or under any will or codicil of the declarant;
- 3525 3. a beneficiary of a life insurance policy, trust, qualified plan, pay on death account, or
- 3526 transfer on death deed that is held, owned, made, or established by, or on behalf of, the
- 3527 declarant;
- 3528 4. entitled to benefit financially upon the death of the declarant;
- 3529 5. entitled to a right to, or interest in, real or personal property upon the death of the declarant;
- 3530 6. directly financially responsible for the declarant's medical care;

- 3531 7. a health care provider who is providing care to the declarant or an administrator at a health
- 3532 care facility in which the declarant is receiving care; or
- 3533 8. the appointed agent or alternate agent.

3534 _____

3535 Signature of Witness Printed Name of Witness

3536 _____

3537 Street Address City State Zip Code

3538 If the witness is signing to confirm an oral directive, describe below the circumstances under

3539 which the directive was made.

3540 _____

3541 _____

3542 Section 86. Section **75A-3-304**, which is renumbered from Section 75-2a-116 is

3543 renumbered and amended to read:

3544 ~~[75-2a-116].~~ **75A-3-304. Presumption of validity of advance health care**

3545 **directive.**

3546 (1) ~~[A]~~ An advance health care directive executed under this chapter is presumed valid

3547 and binding.

3548 (2) ~~[Health care providers and health care facilities]~~ A health care provider and a health

3549 care facility, in the absence of notice to the contrary, shall presume that a declarant who

3550 executed ~~[a]~~ an advance health care directive, whether or not in the presence of a health care

3551 provider, had the required decision making capacity at the time the declarant signed the

3552 directive.

3553 (3) The fact that a declarant executed ~~[a]~~ an advance health care directive shall not be

3554 construed as an indication that the declarant was suffering from mental illness or lacked

3555 decision making capacity.

3556 Section 87. Section **75A-3-305**, which is renumbered from Section 75-2a-119 is

3557 renumbered and amended to read:

3558 ~~[75-2a-119].~~ **75A-3-305. Advance health care directive effect on insurance**

3559 **policies.**

3560 (1) If an adult makes ~~[a]~~ an advance health care directive under this chapter, the

3561 advance health care directive does not affect in any manner:

3562 (a) the obligation of any life or medical insurance company regarding any policy of life
3563 or medical insurance;

3564 (b) the sale, procurement, or issuance of any policy of life or health insurance; or

3565 (c) the terms of any existing policy.

3566 (2) (a) Notwithstanding any terms of an insurance policy to the contrary, an insurance
3567 policy is not legally impaired or invalidated in any manner by:

3568 (i) withholding or withdrawing life sustaining procedures; or

3569 (ii) following directions in [a] an advance health care directive executed as provided in
3570 this chapter.

3571 (b) Following health care instructions in [a] an advance health care directive does not
3572 constitute legal cause for failing to pay life or health insurance benefits.

3573 (c) Death that occurs after following the instructions of an advance health care
3574 directive or a surrogate's instructions does not for any purpose constitute a suicide or homicide
3575 or legally impair or invalidate a policy of insurance or an annuity providing a death benefit.

3576 (3) (a) The following may not require an adult to execute [~~a directive~~] an advance
3577 health care directive or to make any particular choices or entries in [~~a directive~~] an advance
3578 health care directive under this chapter as a condition for being insured for or receiving health
3579 care or life insurance contract services:

3580 (i) a health care provider;

3581 (ii) a health care facility;

3582 (iii) a health maintenance organization;

3583 (iv) an insurer issuing disability, health, or life insurance;

3584 (v) a self-insured employee welfare or benefit plan;

3585 (vi) a nonprofit medical service corporation or mutual nonprofit hospital service
3586 corporation; or

3587 (vii) any other person, firm, or entity.

3588 (b) Nothing in this chapter:

3589 (i) may be construed to require an insurer to insure risks otherwise considered by the
3590 insurer as not a covered risk;

3591 (ii) is intended to impair or supersede any other legal right or legal responsibility which
3592 an adult may have to effect the withholding or withdrawal of life sustaining procedures in any

3593 lawful manner; or

3594 (iii) creates any presumption concerning the intention of an adult who has not executed

3595 [~~a~~] an advance health care directive.

3596 Section 88. Section **75A-3-306**, which is renumbered from Section 75-2a-123 is

3597 renumbered and amended to read:

3598 ~~[75-2a-123]~~. **75A-3-306. Advance health care directive effect during**
3599 **pregnancy.**

3600 (1) [~~A~~] An advance health care directive that provides for the withholding or

3601 withdrawal of life sustaining procedures has no force during the course of a declarant's

3602 pregnancy.

3603 (2) Subsection (1) does not negate the appointment of a health care agent during the

3604 course of a declarant's pregnancy.

3605 Section 89. Section **75A-3-307**, which is renumbered from Section 75-2a-114 is

3606 renumbered and amended to read:

3607 ~~[75-2a-114]~~. **75A-3-307. Revocation of advance health care directive.**

3608 (1) An advance health care directive may be revoked at any time by the declarant by:

3609 (a) writing "void" across the document;

3610 (b) obliterating, burning, tearing, or otherwise destroying or defacing the document in

3611 any manner indicating an intent to revoke;

3612 (c) instructing another to do one of the acts described in Subsection (1)(a) or (b);

3613 (d) a written revocation of the directive signed and dated by:

3614 (i) the declarant; or

3615 (ii) an adult:

3616 (A) signing on behalf of the declarant; and

3617 (B) acting at the direction of the declarant; or

3618 (e) an oral expression of an intent to revoke the directive in the presence of a witness

3619 who is age 18 years old or older and who is not:

3620 (i) related to the declarant by blood or marriage;

3621 (ii) entitled to any portion of the declarant's estate according to the laws of intestate

3622 succession of this state or under any will or codicil of the declarant;

3623 (iii) the beneficiary of any of the following that are held, owned, made, or established

3624 by, or on behalf of, the declarant:

3625 (A) a life insurance policy;

3626 (B) a trust;

3627 (C) a qualified plan;

3628 (D) a pay on death account; or

3629 (E) a transfer on death deed;

3630 (iv) entitled to benefit financially upon the death of the declarant;

3631 (v) entitled to a right to, or interest in, real or personal property upon the death of the

3632 declarant;

3633 (vi) directly financially responsible for the declarant's medical care;

3634 (vii) a health care provider who is:

3635 (A) providing care to the declarant; or

3636 (B) an administrator at a health care facility in which the declarant is receiving care; or

3637 (viii) the adult who will become agent or default surrogate after the revocation.

3638 (2) A decree of annulment, divorce, dissolution of marriage, or legal separation

3639 revokes the designation of a spouse as an agent, unless:

3640 (a) otherwise specified in the decree; or

3641 (b) the declarant has affirmed the intent to retain the agent subsequent to the

3642 annulment, divorce, or legal separation.

3643 (3) An advance health care directive that conflicts with an earlier advance health care

3644 directive revokes the earlier directive to the extent of the conflict.

3645 Section 90. Section **75A-3-308**, which is renumbered from Section 75-2a-118 is

3646 renumbered and amended to read:

3647 ~~[75-2a-118]~~. **75A-3-308. Illegal destruction or falsification of advance**

3648 **health care directive.**

3649 (1) A person is guilty of a class B misdemeanor if the person:

3650 (a) willfully conceals, cancels, defaces, obliterates, or damages [a] an advance health

3651 care directive of another without the declarant's consent; or

3652 (b) falsifies, forges, or alters a health care directive or a revocation of the advance

3653 health care directive of another person.

3654 (2) A person is guilty of criminal homicide if:

- 3655 (a) the person:
- 3656 (i) falsifies or forges the advance health care directive of an adult; or
- 3657 (ii) willfully conceals or withholds personal knowledge of:
- 3658 (A) the existence of [a] an advance health care directive;
- 3659 (B) the revocation of [a] an advance health care directive; or
- 3660 (C) the disqualification of a surrogate; and
- 3661 (b) the actions described in Subsection (2)(a) cause a withholding or withdrawal of life
- 3662 sustaining procedures contrary to the wishes of a declarant resulting in the death of the
- 3663 declarant.

3664 Section 91. Section **75A-3-309**, which is renumbered from Section 75-2a-121 is

3665 renumbered and amended to read:

3666 ~~[75-2a-121].~~ **75A-3-309. Reciprocity of advance health care directive --**

3667 **Application of former provisions of law.**

3668 Unless otherwise provided in the advance health care directive:

3669 (1) a health care provider or health care facility may, in good faith, rely on any advance

3670 health care directive, power of attorney, or similar instrument:

- 3671 (a) executed in another state; or
- 3672 (b) executed prior to January 1, 2008, in this state [~~under the provisions of Chapter 2,~~
- 3673 ~~Part 11, Personal Choice and Living Will Act~~];

3674 (2) [a] an advance health care directive executed under the provisions of this chapter

3675 shall be governed pursuant to the provisions of this chapter that were in effect at that time,

3676 unless it appears from the directive that the declarant intended the current provisions of this

3677 chapter to apply; and

3678 (3) the advance health care directive described in Subsection (1) is presumed to comply

3679 with the requirements of this chapter.

3680 Section 92. Section **75A-4-101**, which is renumbered from Section 75-10-102 is

3681 renumbered and amended to read:

3682 **CHAPTER 4. UNIFORM POWERS OF APPOINTMENT ACT**

3683 **Part 1. General Provisions**

3684 ~~[75-10-102].~~ **75A-4-101. Definitions.**

3685 As used in this chapter:

3686 (1) "Appointee" means a person to which a powerholder makes an appointment of
3687 appointive property.

3688 (2) "Appointive property" means the property or property interest subject to a power of
3689 appointment.

3690 (3) (a) "Blanket-exercise clause" means a clause in an instrument that exercises a
3691 power of appointment and is not a specific-exercise clause. [~~The term~~]

3692 (b) "Blanket-exercise clause" includes a clause that:

3693 ~~(a)~~ (i) expressly uses the words "any power" in exercising any power of appointment
3694 the powerholder has;

3695 ~~(b)~~ (ii) expressly uses the words "any property" in appointing any property over
3696 which the powerholder has a power of appointment; or

3697 ~~(c)~~ (iii) disposes of all property subject to disposition by the powerholder.

3698 (4) "Court" means the same as that term is defined in Section [75-1-201](#).

3699 (5) "Descendant" means the same as that term is defined in Section [75-1-201](#).

3700 ~~(4)~~ (6) "Donor" means a person that creates a power of appointment.

3701 (7) "Estate" means the same as that term is defined in Section [75-1-201](#).

3702 ~~(5)~~ (8) "Exclusionary power of appointment" means a power of appointment
3703 exercisable in favor of any one or more of the permissible appointees to the exclusion of the
3704 other permissible appointees.

3705 ~~(6)~~ (9) "General power of appointment" means a power of appointment exercisable in
3706 favor of the powerholder, the powerholder's estate, a creditor of the powerholder, or a creditor
3707 of the powerholder's estate.

3708 ~~(7)~~ (10) "Gift-in-default clause" means a clause identifying a taker in default of
3709 appointment.

3710 ~~(8)~~ (11) "Impermissible appointee" means a person that is not a permissible
3711 appointee.

3712 ~~(9)~~ (12) "Instrument" means a record.

3713 ~~(10)~~ (13) (a) "Nongeneral power of appointment" means a power of appointment that
3714 is not a general power of appointment. [~~The terms "special power of appointment," "limited~~
3715 ~~power of appointment,"~~]

3716 (b) "Nongeneral power of appointment" includes a special power of appointment, a

3717 limited power of appointment, or similar terminology that is used in an instrument creating a
3718 power that does not grant powers making it a general power of appointment [~~as defined in this~~
3719 ~~chapter mean the same as and may be used interchangeably with the term nongeneral power of~~
3720 ~~appointment~~].

3721 ~~[(11)]~~ (14) "Permissible appointee" means a person in whose favor a powerholder may
3722 exercise a power of appointment.

3723 ~~[(12)]~~ (15) "Person" means an individual, estate, trust, business or nonprofit entity,
3724 public corporation, government or governmental subdivision, agency, instrumentality, or other
3725 legal entity.

3726 ~~[(13)]~~ (16) "Powerholder" means a person in whom a donor creates a power of
3727 appointment.

3728 ~~[(14)]~~ (17) (a) "Power of appointment" means a power that enables a powerholder
3729 acting in a nonfiduciary capacity to designate a recipient of an interest in, or another power of
3730 appointment over, the appointive property. [~~The term~~]

3731 (b) "Power of appointment" does not include a power of attorney.

3732 ~~[(15)]~~ (18) (a) "Presently exercisable power of appointment" means a power of
3733 appointment exercisable by the powerholder at a relevant time. [~~The term:~~]

3734 ~~[(a)]~~ (b) "Presently exercisable power of appointment" includes a power of
3735 appointment not exercisable until the occurrence of a specified event, the satisfaction of an
3736 ascertainable standard, or the passage of a specified time only after:

3737 (i) the occurrence of the specified event;

3738 (ii) the satisfaction of the ascertainable standard; or

3739 (iii) the passage of the specified time[~~; and~~].

3740 ~~[(b)]~~ (c) "Presently exercisable power of appointment" does not include a power
3741 exercisable only at the powerholder's death.

3742 (19) "Property" means the same as that term is defined in Section [75-1-201](#).

3743 ~~[(16)]~~ (20) "Record" means information that is inscribed on a tangible medium or that
3744 is stored in an electronic or other medium and is retrievable in perceivable form.

3745 ~~[(17)]~~ (21) "Specific-exercise clause" means a clause in an instrument that specifically
3746 refers to and exercises a particular power of appointment.

3747 ~~[(18)]~~ (22) "Taker in default of appointment" means a person that takes all or part of

3748 the appointive property to the extent the powerholder does not effectively exercise the power of
3749 appointment.

3750 ~~[(19)]~~ (23) "Terms of the instrument" means the manifestation of the intent of the
3751 maker of the instrument regarding the instrument's provisions as expressed in the instrument or
3752 as may be established by other evidence that would be admissible in a legal proceeding.

3753 (24) "Trust" means the same as that term is defined in Section 75-1-201.

3754 (25) "Will" means the same as that term is defined in Section 75-1-201.

3755 Section 93. Section **75A-4-102**, which is renumbered from Section 75-10-103 is
3756 renumbered and amended to read:

3757 ~~[75-10-103].~~ **75A-4-102. Governing law.**

3758 (1) Unless the terms of the instrument creating a power of appointment manifest a
3759 contrary intent:

3760 (a) the creation, revocation, amendment, interpretation and definition of terms, or the
3761 determination of the rights of the appointee of the power is governed by the law of the donor's
3762 domicile at the relevant time; and

3763 (b) the formalities for the exercise, release, or disclaimer of the power, or the
3764 revocation or amendment of the exercise, release, or disclaimer of the power is governed by the
3765 law of the powerholder's state of domicile at the relevant time.

3766 (2) The law of the powerholder's state of domicile may not govern the interpretation
3767 and definition of terms, or the determination of the rights of the appointee of the power, which
3768 shall be governed by the law of the donor's domicile at the relevant time.

3769 (3) Claims of creditors, including creditor claims regarding a power not created by a
3770 powerholder as set forth in Section ~~[75-10-502]~~ 75A-4-502, and other parties claiming an
3771 interest in property or rights subject to a power will be governed by the laws of the donor's
3772 domicile at the time of the creation of the power and not the powerholder's state of domicile
3773 either at the time of the creation of the power or at the time of exercise of the power.

3774 Section 94. Section **75A-4-103**, which is renumbered from Section 75-10-104 is
3775 renumbered and amended to read:

3776 ~~[75-10-104].~~ **75A-4-103. Common law and principles of equity.**

3777 The common law and principles of equity supplement this chapter, except to the extent
3778 modified by this chapter or laws of this state other than this chapter.

3779 Section 95. Section **75A-4-201**, which is renumbered from Section 75-10-201 is
3780 renumbered and amended to read:

3781 **Part 2. Creation, Revocation, and Amendment of Power of Appointment**

3782 ~~[75-10-201]~~. **75A-4-201. Creation of power of appointment.**

3783 (1) A power of appointment is created only if:

3784 (a) the instrument creating the power is valid under applicable law; and

3785 (b) the terms of the instrument creating the power manifest the donor's intent to create
3786 in a powerholder a power of appointment over the appointive property exercisable in favor of a
3787 permissible appointee.

3788 (2) A power of appointment may be created by the exercise of a power of appointment.

3789 (3) A power of appointment may not be created in a deceased individual.

3790 (4) Subject to an applicable rule against perpetuities, a power of appointment may be
3791 created in an unborn or unascertained powerholder.

3792 Section 96. Section **75A-4-202**, which is renumbered from Section 75-10-202 is
3793 renumbered and amended to read:

3794 ~~[75-10-202]~~. **75A-4-202. Nontransferability.**

3795 (1) A powerholder may not transfer a power of appointment.

3796 (2) If a powerholder dies without exercising or releasing a power, the power lapses.

3797 Section 97. Section **75A-4-203**, which is renumbered from Section 75-10-203 is
3798 renumbered and amended to read:

3799 ~~[75-10-203]~~. **75A-4-203. Presumption of unlimited authority.**

3800 Subject to Section ~~[75-10-205]~~ 75A-4-205, and unless the terms of the instrument
3801 creating a power of appointment manifest a contrary intent, the power is:

3802 (1) presently exercisable;

3803 (2) exclusionary; and

3804 (3) except as otherwise provided in Section ~~[75-10-204]~~ 75A-4-204, general.

3805 Section 98. Section **75A-4-204**, which is renumbered from Section 75-10-204 is
3806 renumbered and amended to read:

3807 ~~[75-10-204]~~. **75A-4-204. Exception to presumption of unlimited authority.**

3808 Unless the terms of the instrument creating a power of appointment manifest a contrary
3809 intent, the power is nongeneral if:

3810 (1) the power is exercisable only at the powerholder's death; and

3811 (2) the permissible appointees of the power are a defined and limited class that does
 3812 not include the powerholder's estate, the powerholder's creditors, or the creditors of the
 3813 powerholder's estate.

3814 Section 99. Section **75A-4-205**, which is renumbered from Section 75-10-205 is
 3815 renumbered and amended to read:

3816 ~~[75-10-205]~~. **75A-4-205. Rules of classification.**

3817 (1) ~~[In this section]~~ As used in this section, "adverse party" means a person with a
 3818 substantial beneficial interest in property that would be affected adversely by a powerholder's
 3819 exercise or nonexercise of a power of appointment in favor of the powerholder, the
 3820 powerholder's estate, a creditor of the powerholder, or a creditor of the powerholder's estate.

3821 (2) If a powerholder may exercise a power of appointment only with the consent or
 3822 joinder of an adverse party, the power is nongeneral.

3823 (3) If the permissible appointees of a power of appointment are not defined and
 3824 limited, the power is exclusionary.

3825 Section 100. Section **75A-4-206**, which is renumbered from Section 75-10-206 is
 3826 renumbered and amended to read:

3827 ~~[75-10-206]~~. **75A-4-206. Donor's power to revoke or amend.**

3828 A donor may revoke or amend a power of appointment unless or to the extent the
 3829 instrument creating the power is made irrevocable by the donor or the exercise of a presently
 3830 exercisable power has been irrevocably made or effected.

3831 Section 101. Section **75A-4-301**, which is renumbered from Section 75-10-301 is
 3832 renumbered and amended to read:

3833 **Part 3. Exercise of Power of Appointment**

3834 ~~[75-10-301]~~. **75A-4-301. Requisites for exercise of power of appointment.**

3835 A power of appointment is exercised only:

3836 (1) if the instrument exercising the power is valid under applicable law;

3837 (2) if the terms of the instrument exercising the power:

3838 (a) manifest the powerholder's intent to exercise the power; and

3839 (b) satisfy the requirements of exercise, if any, imposed by the donor; and

3840 (3) to the extent the appointment is a permissible exercise of the power.

3841 Section 102. Section **75A-4-302**, which is renumbered from Section 75-10-302 is
3842 renumbered and amended to read:

3843 ~~[75-10-302]~~. **75A-4-302. Intent to exercise -- Determining intent from**
3844 **residuary clause.**

3845 (1) As used in this section:

3846 (a) "Residuary clause" does not include a residuary clause containing a
3847 blanket-exercise clause or a specific-exercise clause.

3848 (b) "Will" includes a codicil and a testamentary instrument that revises another will.

3849 (2) A residuary clause in a powerholder's will, or a comparable clause in the
3850 powerholder's revocable trust, manifests the powerholder's intent to exercise a power of
3851 appointment only if:

3852 (a) the terms of the instrument containing the residuary clause do not manifest a
3853 contrary intent;

3854 (b) the power is a general power exercisable in favor of the powerholder's estate;

3855 (c) there is no gift-in-default clause or the clause is ineffective; and

3856 (d) the powerholder did not release the power.

3857 Section 103. Section **75A-4-303**, which is renumbered from Section 75-10-303 is
3858 renumbered and amended to read:

3859 ~~[75-10-303]~~. **75A-4-303. Intent to exercise -- After-acquired power.**

3860 Unless the terms of the instrument exercising a power of appointment manifest a
3861 contrary intent:

3862 (1) except as otherwise provided in Subsection (2), a blanket-exercise clause extends to
3863 a power acquired by the powerholder after executing the instrument containing the clause; and

3864 (2) if the powerholder is also the donor of the power, the clause does not extend to the
3865 power unless there is no gift-in-default clause or the gift-in-default clause is ineffective.

3866 Section 104. Section **75A-4-304**, which is renumbered from Section 75-10-304 is
3867 renumbered and amended to read:

3868 ~~[75-10-304]~~. **75A-4-304. Compliance with donor-imposed formal**
3869 **requirements.**

3870 (1) (a) A powerholder's compliance with formal requirements of appointment imposed
3871 by the donor is sufficient only if the powerholder substantially complies with the conditions,

3872 requirements, and formalities set forth in the power of appointment, including complying with
3873 all the requirements for making specific reference to the power, that the power shall be
3874 exercised in a specific document such as a will, or that the document exercising the power shall
3875 be witnessed or notarized.

3876 (b) If the donor limited the powerholder's exercise to a validly executed will,
3877 substantial compliance may not include the exercise of the power by a trust or another
3878 document not meeting the requirements of a properly executed will.

3879 (2) Unless required by the instrument creating the power, the probate of a properly
3880 executed will is not required for the exercise of a power to be valid and complete.

3881 Section 105. Section **75A-4-305**, which is renumbered from Section 75-10-305 is
3882 renumbered and amended to read:

3883 ~~[75-10-305]~~. **75A-4-305. Permissible appointment.**

3884 (1) A powerholder of a general power of appointment that permits appointment to the
3885 powerholder or the powerholder's estate may make any appointment, including an appointment
3886 in trust or creating a new power of appointment, that the powerholder could make in disposing
3887 of the powerholder's own property.

3888 (2) A powerholder of a general power of appointment that permits appointment only to
3889 the creditors of the powerholder or of the powerholder's estate may appoint only to those
3890 creditors.

3891 (3) Unless the terms of the instrument creating a power of appointment manifest a
3892 contrary intent, the powerholder of a nongeneral power may:

3893 (a) make an appointment in any form, including an appointment in trust, in favor of a
3894 permissible appointee;

3895 (b) create a general power in a permissible appointee;

3896 (c) create a nongeneral power in any person to appoint one or more of the permissible
3897 appointees of the original nongeneral power; or

3898 (d) create a nongeneral power in a permissible appointee to appoint one or more
3899 persons if the permissible appointees of the new nongeneral power include the permissible
3900 appointees of the original nongeneral power.

3901 Section 106. Section **75A-4-306**, which is renumbered from Section 75-10-306 is
3902 renumbered and amended to read:

3903 ~~[75-10-306]~~. 75A-4-306. **Appointment to deceased appointee or**
3904 **permissible appointee's descendant.**

3905 (1) Subject to Sections ~~75-2-603~~ and ~~75-2-604~~, an appointment to a deceased appointee
3906 is ineffective.

3907 (2) Unless the terms of the instrument creating a power of appointment manifest a
3908 contrary intent, a powerholder of a nongeneral power may exercise the power in favor of, or
3909 create a new power of appointment in, a descendant of a deceased permissible appointee
3910 whether or not the descendant is described by the donor as a permissible appointee.

3911 Section 107. Section **75A-4-307**, which is renumbered from Section 75-10-307 is
3912 renumbered and amended to read:

3913 ~~[75-10-307]~~. 75A-4-307. **Impermissible appointment.**

3914 (1) Except as otherwise provided in Section ~~[75-10-306]~~ 75A-4-306, an exercise of a
3915 power of appointment in favor of an impermissible appointee is ineffective.

3916 (2) An exercise of a power of appointment in favor of a permissible appointee is
3917 ineffective to the extent the appointment is a fraud on the power.

3918 Section 108. Section **75A-4-308**, which is renumbered from Section 75-10-308 is
3919 renumbered and amended to read:

3920 ~~[75-10-308]~~. 75A-4-308. **Elective allocation doctrine.**

3921 If a powerholder exercises a power of appointment in a disposition that also disposes of
3922 property the powerholder owns, the owned property and the appointive property shall be
3923 allocated in the permissible manner that best carries out the powerholder's intent.

3924 Section 109. Section **75A-4-309**, which is renumbered from Section 75-10-309 is
3925 renumbered and amended to read:

3926 ~~[75-10-309]~~. 75A-4-309. **Capture doctrine -- Disposition of ineffectively**
3927 **appointed property under general power.**

3928 To the extent a powerholder of a general power of appointment, other than a power to
3929 withdraw property from, revoke, or amend a trust, makes an ineffective appointment:

3930 (1) the gift-in-default clause controls the disposition of the ineffectively appointed
3931 property; or

3932 (2) if there is no gift-in-default clause or to the extent the clause is ineffective, the
3933 ineffectively appointed property:

- 3934 (a) passes to:
- 3935 (i) the powerholder if the powerholder is a permissible appointee and is living; or
- 3936 (ii) if the powerholder is an impermissible appointee or is deceased, the powerholder's
- 3937 estate if the estate is a permissible appointee; or
- 3938 (b) if there is no taker under Subsection (2)(a), passes under a reversionary interest to
- 3939 the donor or the donor's transferee or successor in interest.

3940 Section 110. Section **75A-4-310**, which is renumbered from Section 75-10-310 is

3941 renumbered and amended to read:

3942 ~~[75-10-310]~~. **75A-4-310**. **Disposition of unappointed property under**

3943 **released or unexercised general power.**

3944 To the extent a powerholder releases or fails to exercise a general power of appointment

3945 other than a power to withdraw property from, revoke, or amend a trust:

- 3946 (1) the gift-in-default clause controls the disposition of the unappointed property; or
- 3947 (2) if there is no gift-in-default clause or to the extent the clause is ineffective:
- 3948 (a) except as otherwise provided in Subsection (2)(b), the unappointed property passes
- 3949 to:
- 3950 (i) the powerholder if the powerholder is a permissible appointee and is living; or
- 3951 (ii) if the powerholder is an impermissible appointee or is deceased, the powerholder's
- 3952 estate if the estate is a permissible appointee; or
- 3953 (b) to the extent the powerholder released the power, or if there is no taker under
- 3954 Subsection (2)(a), the unappointed property passes under a reversionary interest to the donor or
- 3955 the donor's transferee or successor in interest.

3956 Section 111. Section **75A-4-311**, which is renumbered from Section 75-10-311 is

3957 renumbered and amended to read:

3958 ~~[75-10-311]~~. **75A-4-311**. **Disposition of unappointed property under**

3959 **released or unexercised nongeneral power.**

3960 To the extent a powerholder releases, ineffectively exercises, or fails to exercise a

3961 nongeneral power of appointment:

- 3962 (1) the gift-in-default clause controls the disposition of the unappointed property; or
- 3963 (2) if there is no gift-in-default clause or to the extent the clause is ineffective, the
- 3964 unappointed property:

3965 (a) passes to the permissible appointees if:
3966 (i) the permissible appointees are defined and limited; and
3967 (ii) the terms of the instrument creating the power do not manifest a contrary intent; or
3968 (b) if there is no taker under Subsection (2)(a), passes under a reversionary interest to
3969 the donor or the donor's transferee or successor in interest.

3970 Section 112. Section **75A-4-312**, which is renumbered from Section 75-10-312 is
3971 renumbered and amended to read:

3972 ~~[75-10-312]~~. **75A-4-312**. **Disposition of unappointed property if partial**
3973 **appointment to taker in default.**

3974 Unless the terms of the instrument creating or exercising a power of appointment
3975 manifest a contrary intent, if the powerholder makes a valid partial appointment to a taker in
3976 default of appointment, the taker in default of appointment may share fully in unappointed
3977 property.

3978 Section 113. Section **75A-4-313**, which is renumbered from Section 75-10-313 is
3979 renumbered and amended to read:

3980 ~~[75-10-313]~~. **75A-4-313**. **Appointment to taker in default.**

3981 If a powerholder makes an appointment to a taker in default of appointment and the
3982 appointee would have taken the property under a gift-in-default clause had the property not
3983 been appointed, the power of appointment is considered not to have been exercised and the
3984 appointee takes under the clause.

3985 Section 114. Section **75A-4-314**, which is renumbered from Section 75-10-314 is
3986 renumbered and amended to read:

3987 ~~[75-10-314]~~. **75A-4-314**. **Powerholder's authority to revoke or amend**
3988 **exercise.**

3989 Unless the terms of the instrument creating the power of appointment or the instrument
3990 exercising the power of appointment provide that the exercise is irrevocable or unamendable, a
3991 powerholder may revoke or amend an exercise of a power of appointment made by an
3992 instrument effective during the life of the powerholder where the exercise is to become
3993 effective at some future time or contingency and where that future time and contingency has
3994 not yet occurred, as long as the revocation or amendment is done with the same formality as the
3995 original exercise of the power of appointment.

3996 Section 115. Section **75A-4-401**, which is renumbered from Section 75-10-401 is
3997 renumbered and amended to read:

3998 **Part 4. Disclaimer or Release - Contract to Appoint or Not to Appoint**

3999 ~~[75-10-401]~~. **75A-4-401. Disclaimer.**

4000 As provided by Section [75-2-801](#):

4001 (1) A powerholder may disclaim all or part of a power of appointment.

4002 (2) A permissible appointee, an appointee, or a taker in default of appointment may
4003 disclaim all or part of an interest in appointive property.

4004 Section 116. Section **75A-4-402**, which is renumbered from Section 75-10-402 is
4005 renumbered and amended to read:

4006 ~~[75-10-402]~~. **75A-4-402. Authority to release.**

4007 A powerholder may release a power of appointment, in whole or in part, except to the
4008 extent the terms of the instrument creating the power prevent the release.

4009 Section 117. Section **75A-4-403**, which is renumbered from Section 75-10-403 is
4010 renumbered and amended to read:

4011 ~~[75-10-403]~~. **75A-4-403. Method of release.**

4012 A powerholder of a releasable power of appointment may release the power in whole or
4013 in part:

4014 (1) by substantial compliance with a method provided in the terms of the instrument
4015 creating the power; or

4016 (2) if the terms of the instrument creating the power do not provide a method or the
4017 method provided in the terms of the instrument is not expressly made exclusive, by a record
4018 manifesting the powerholder's intent by clear and convincing evidence.

4019 Section 118. Section **75A-4-404**, which is renumbered from Section 75-10-404 is
4020 renumbered and amended to read:

4021 ~~[75-10-404]~~. **75A-4-404. Revocation or amendment of release.**

4022 A powerholder may revoke or amend a release of a power of appointment only to the
4023 extent that:

4024 (1) the instrument of release is revocable by the powerholder; or

4025 (2) the powerholder reserves a power of revocation or amendment in the instrument of
4026 release.

4027 Section 119. Section **75A-4-405**, which is renumbered from Section 75-10-405 is
4028 renumbered and amended to read:

4029 ~~[75-10-405]~~. **75A-4-405. Power to contract -- Presently exercisable power**
4030 **of appointment.**

4031 A powerholder of a presently exercisable power of appointment may contract:

4032 (1) not to exercise the power; or

4033 (2) to exercise the power if the contract when made does not confer a benefit on an
4034 impermissible appointee.

4035 Section 120. Section **75A-4-406**, which is renumbered from Section 75-10-406 is
4036 renumbered and amended to read:

4037 ~~[75-10-406]~~. **75A-4-406. Power to contract -- Power of appointment not**
4038 **presently exercisable.**

4039 A powerholder of a power of appointment that is not presently exercisable may contract
4040 to exercise or not to exercise the power only if the powerholder:

4041 (1) is also the donor of the power; and

4042 (2) has reserved the power in a revocable trust.

4043 Section 121. Section **75A-4-407**, which is renumbered from Section 75-10-407 is
4044 renumbered and amended to read:

4045 ~~[75-10-407]~~. **75A-4-407. Remedy for breach of contract to appoint or not**
4046 **to appoint.**

4047 The remedy for a powerholder's breach of a contract to appoint or not to appoint
4048 appointive property is limited to damages payable out of the appointive property or, if
4049 appropriate, specific performance of the contract.

4050 Section 122. Section **75A-4-501**, which is renumbered from Section 75-10-501 is
4051 renumbered and amended to read:

4052 **Part 5. Rights of Powerholder's Creditors in Appointive Property**

4053 ~~[75-10-501]~~. **75A-4-501. Creditor claim -- General power created by**
4054 **powerholder.**

4055 (1) ~~[In this section]~~ As used in this section, "power of appointment created by the
4056 powerholder" includes a power of appointment created in a transfer by another person to the
4057 extent the powerholder contributed value to the transfer.

4058 (2) Appointive property subject to a general power of appointment created by the
4059 powerholder is subject to a claim of a creditor of the powerholder or of the powerholder's estate
4060 to the extent provided in Title 25, Chapter 6, Uniform Voidable Transactions Act.

4061 (3) Subject to Subsection (2), appointive property subject to a general power of
4062 appointment created by the powerholder is not subject to a claim of a creditor of the
4063 powerholder or the powerholder's estate to the extent the powerholder irrevocably appointed
4064 the property in favor of a person other than the powerholder or the powerholder's estate.

4065 (4) Subject to Subsections (2) and (3), and notwithstanding the presence of a
4066 spendthrift provision or whether the claim arose before or after the creation of the power of
4067 appointment, appointive property subject to a general power of appointment created by the
4068 powerholder is subject to a claim of a creditor of:

4069 (a) the powerholder, to the same extent as if the powerholder owned the appointive
4070 property, if the power is presently exercisable; and

4071 (b) the powerholder's estate, to the extent the estate is insufficient to satisfy the claim
4072 and subject to the right of a decedent to direct the source from which liabilities are paid, if the
4073 power is exercisable at the powerholder's death.

4074 Section 123. Section **75A-4-502**, which is renumbered from Section 75-10-502 is
4075 renumbered and amended to read:

4076 ~~[75-10-502]~~. **75A-4-502. Creditor claim -- Power not created by**
4077 **powerholder.**

4078 (1) (a) The property subject to a general or a nongeneral power of appointment not
4079 created by the powerholder, including a presently exercisable general or nongeneral power of
4080 appointment, is exempt from a claim of a creditor of the powerholder or the powerholder's
4081 estate.

4082 (b) The powerholder of such a power may not be compelled to exercise the power and
4083 the powerholder's creditors may not acquire the power, any rights thereto, or reach the trust
4084 property or beneficial interests by any other means.

4085 (c) A court may not exercise or require the powerholder to exercise the power of
4086 appointment.

4087 (2) As set forth in Section ~~[75-10-103]~~ 75A-4-102, the law of the donor's domicile at
4088 the time of creation shall govern claims of creditors and other parties claiming an interest in

4089 property or rights subject to a power of appointment.

4090 Section 124. Section **75A-4-503**, which is renumbered from Section 75-10-503 is
4091 renumbered and amended to read:

4092 ~~[75-10-503]~~. **75A-4-503. Power to withdraw.**

4093 (1) For purposes of this part, and except as otherwise provided in Subsection (2), a
4094 power to withdraw property from a trust is treated, during the time the power may be exercised,
4095 as a presently exercisable general power of appointment to the extent of the property subject to
4096 the power to withdraw.

4097 (2) On the lapse, release, or waiver of a power to withdraw property from a trust, the
4098 power is treated as a presently exercisable general power of appointment only to the extent the
4099 value of the property affected by the lapse, release, or waiver exceeds the greater of the amount
4100 specified in 26 U.S.C. Sec. 2041(b)(2) and 26 U.S.C. Sec. 2514(e) or the amount specified in
4101 26 U.S.C. Sec. 2503(b).

4102 Section 125. Section **75A-4-601**, which is renumbered from Section 75-10-601 is
4103 renumbered and amended to read:

4104 **Part 6. Applicability Provisions**

4105 ~~[75-10-601]~~. **75A-4-601. Uniformity of application and construction.**

4106 In applying and construing this uniform act, consideration shall be given to the need to
4107 promote uniformity of the law with respect to its subject matter among states that enact ~~[it]~~ this
4108 uniform law.

4109 Section 126. Section **75A-4-602**, which is renumbered from Section 75-10-602 is
4110 renumbered and amended to read:

4111 ~~[75-10-602]~~. **75A-4-602. Relation to Electronic Signatures in Global and**
4112 **National Commerce Act.**

4113 This chapter modifies, limits, or supersedes the Electronic Signatures in Global and
4114 National Commerce Act, 15 U.S.C. Sec. 7001 et seq., but does not modify, limit, or supersede
4115 Section 101(c) of that act, 15 U.S.C. Sec. 7001(c), or authorize electronic delivery of any of the
4116 notices described in Section 103(b) of that act, 15 U.S.C. Sec. 7003(b).

4117 Section 127. Section **75A-4-603**, which is renumbered from Section 75-10-603 is
4118 renumbered and amended to read:

4119 ~~[75-10-603]~~. **75A-4-603. Application to existing relationships.**

- 4120 (1) Except as otherwise provided in this chapter, on and after May 9, 2017:
- 4121 (a) this chapter applies to a power of appointment created before, on, or after May 9,
- 4122 2017;
- 4123 (b) this chapter applies to a judicial proceeding concerning a power of appointment
- 4124 commenced on or after May 9, 2017;
- 4125 (c) this chapter applies to a judicial proceeding concerning a power of appointment
- 4126 commenced before May 9, 2017, unless the court finds that application of a particular
- 4127 provision of this chapter would interfere substantially with the effective conduct of the judicial
- 4128 proceeding or prejudice a right of a party, in which case the particular provision of this chapter
- 4129 does not apply and the superseded law applies; and
- 4130 (d) a rule of construction or presumption provided in this chapter applies to an
- 4131 instrument executed before May 9, 2017, unless there is a clear indication of a contrary intent
- 4132 in the terms of the instrument.
- 4133 (2) Except as otherwise provided in Subsections (1)(a) through (d), an action done
- 4134 before May 9, 2017, is not affected by this chapter.
- 4135 (3) If a right is acquired, extinguished, or barred on the expiration of a prescribed
- 4136 period that commenced under law of this state other than this chapter before May 9, 2017, the
- 4137 law continues to apply to the right.

4138 Section 128. Section **75A-5-101**, which is renumbered from Section 22-3-102 is

4139 renumbered and amended to read:

4140 **CHAPTER 5. UNIFORM FIDUCIARY INCOME AND PRINCIPAL ACT**

4141 **Part 1. General Provisions**

4142 ~~[22-3-102]~~. **75A-5-101. Definitions.**

4143 ~~[It]~~ As used in this chapter:

- 4144 (1) (a) "Accounting period" means a calendar year, unless a fiduciary selects another
- 4145 period of 12 calendar months or approximately 12 calendar months.
- 4146 (b) "Accounting period" includes a part of a calendar year or another period of 12
- 4147 calendar months or approximately 12 calendar months that begins when an income interest
- 4148 begins or ends when an income interest ends.
- 4149 (2) (a) "Asset-backed security" means a security that is serviced primarily by the cash
- 4150 flows of a discrete pool of fixed or revolving receivables or other financial assets that by the

4151 financial assets' terms convert into cash within a finite time.

4152 (b) "Asset-backed security" includes rights or other assets that ensure the servicing or
4153 timely distribution of proceeds to the holder of the asset-backed security.

4154 (c) "Asset-backed security" does not include an asset to which Section [~~22-3-401~~;
4155 ~~22-3-409~~, or ~~22-3-414~~] 75A-5-401, 75A-5-409, or 75A-5-414 applies.

4156 (3) "Beneficiary" includes:

4157 (a) for a trust:

4158 (i) a current beneficiary, including a current income beneficiary and a beneficiary that
4159 may receive only principal;

4160 (ii) a remainder beneficiary; and

4161 (iii) any other successor beneficiary;

4162 (b) for an estate, an heir and devisee; and

4163 (c) for a life estate or term interest, a person that holds a life estate, term interest, or
4164 remainder, or other interest following a life estate or term interest.

4165 (4) "Court" means a court in this state with jurisdiction over a trust or estate, or a life
4166 estate or other term interest described in Subsection [~~22-3-103(2)~~] 75A-5-102(2).

4167 (5) "Current income beneficiary" means a beneficiary to which a fiduciary may
4168 distribute net income, even if the fiduciary also may distribute principal to the beneficiary.

4169 (6) (a) "Distribution" means a payment or transfer by a fiduciary to a beneficiary in the
4170 beneficiary's capacity as a beneficiary, made under the terms of the trust, without consideration
4171 other than the beneficiary's right to receive the payment or transfer under the terms of the trust.

4172 (b) "Distribute," "distributed," and "distributee" have corresponding meanings.

4173 (7) (a) "Estate" means a decedent's estate.

4174 (b) "Estate" includes the property of the decedent as the estate is originally constituted
4175 and the property of the estate as it exists at any time during administration.

4176 (8) "Fiduciary" includes:

4177 (a) a trustee, trust director as defined in Section 75-12-102, personal representative, life
4178 tenant, holder of a term interest, and person acting under a delegation from a fiduciary;

4179 (b) a person that holds property for a successor beneficiary whose interest may be
4180 affected by an allocation of receipts and expenditures between income and principal; and

4181 (c) if there are two or more co-fiduciaries, all co-fiduciaries acting under the terms of

4182 the trust and applicable law.

4183 (9) (a) "Income" means money or other property a fiduciary receives as current return
4184 from principal.

4185 (b) "Income" includes a part of receipts from a sale, exchange, or liquidation of a
4186 principal asset to the extent provided in Part 4, Allocation of Receipts.

4187 (10) (a) "Income interest" means the right of a current income beneficiary to receive all
4188 or part of net income, whether the terms of the trust require the net income to be distributed or
4189 authorize the net income to be distributed in the fiduciary's discretion.

4190 (b) "Income interest" includes the right of a current beneficiary to use property held by
4191 a fiduciary.

4192 (11) "Independent person" means a person that is not:

4193 (a) for a trust:

4194 (i) a qualified beneficiary as determined under Section [75-7-103](#);

4195 (ii) a settlor of the trust; or

4196 (iii) an individual whose legal obligation to support a beneficiary may be satisfied by a
4197 distribution from the trust;

4198 (b) for an estate, a beneficiary;

4199 (c) a spouse, parent, brother, sister, or issue of an individual described in Subsection
4200 (11)(a) or (b);

4201 (d) a corporation, partnership, limited liability company, or other entity in which
4202 persons described in Subsections (11)(a) through (c), in the aggregate, have voting control; or

4203 (e) an employee of a person described in Subsection (11)(a), (b), (c), or (d).

4204 (12) "Mandatory income interest" means the right of a current income beneficiary to
4205 receive net income that the terms of the trust require the fiduciary to distribute.

4206 (13) (a) "Net income" means:

4207 (i) the total allocations during an accounting period to income under the terms of a trust
4208 and this chapter minus the disbursements during the accounting period, other than
4209 distributions, allocated to income under the terms of the trust and this chapter; and

4210 (ii) to the extent the trust is a unitrust under Part 3, Unitrust, the unitrust amount
4211 determined under Part 3, Unitrust.

4212 (b) "Net income" includes an adjustment from principal to income under Section

4213 [~~22-3-203~~] [75A-5-203](#).

4214 (c) "Net income" does not include an adjustment from income to principal under
4215 Section [~~22-3-203~~] [75A-5-203](#).

4216 (14) "Person" means:

4217 (a) an individual;

4218 (b) an estate;

4219 (c) a trust;

4220 (d) a business or nonprofit entity;

4221 (e) a public corporation, government or governmental subdivision, agency, or
4222 instrumentality; or

4223 (f) any other legal entity.

4224 (15) "Personal representative" means an executor, administrator, successor personal
4225 representative, special administrator, or person that performs substantially the same function
4226 with respect to an estate under the law governing the person's status.

4227 (16) "Principal" means property held in trust for distribution to, production of income
4228 for, or use by a current or successor beneficiary.

4229 (17) "Record" means information that is inscribed on a tangible medium or that is
4230 stored in an electronic or other medium and is retrievable in perceivable form.

4231 (18) "Settlor" means the same as that term is defined in Section [75-7-103](#).

4232 (19) "Special tax benefit" means:

4233 (a) exclusion of a transfer to a trust from gifts described in Section 2503(b) of the
4234 Internal Revenue Code because of the qualification of an income interest in the trust as a
4235 present interest in property;

4236 (b) status as a qualified subchapter S trust described in Section 1361(d)(3) of the
4237 Internal Revenue Code at a time the trust holds stock of an S corporation described in Section
4238 1361(a)(1) of the Internal Revenue Code;

4239 (c) an estate or gift tax marital deduction for a transfer to a trust under Section 2056 or
4240 2523 of the Internal Revenue Code that depends or depended in whole or in part on the right of
4241 the settlor's spouse to receive the net income of the trust;

4242 (d) exemption in whole or in part of a trust from the federal generation-skipping
4243 transfer tax imposed by Section 2601 of the Internal Revenue Code because the trust was

4244 irrevocable on September 25, 1985, if there is any possibility that:

4245 (i) a taxable distribution, as defined in Section 2612(b) of the Internal Revenue Code,
4246 could be made from the trust; or

4247 (ii) a taxable termination, as defined in Section 2612(a) of the Internal Revenue Code,
4248 could occur with respect to the trust; or

4249 (e) an inclusion ratio, as defined in Section 2642(a) of the Internal Revenue Code, of
4250 the trust which is less than one, if there is any possibility that:

4251 (i) a taxable distribution, as defined in Section 2612(b) of the Internal Revenue Code,
4252 could be made from the trust; or

4253 (ii) a taxable termination, as defined in Section 2612(a) of the Internal Revenue Code,
4254 could occur with respect to the trust.

4255 (20) "Successive interest" means the interest of a successor beneficiary.

4256 (21) "Successor beneficiary" means a person entitled to receive income or principal or
4257 to use property when an income interest or other current interest ends.

4258 (22) "Terms of a trust" means:

4259 (a) except as otherwise provided in Subsection (22)(b), the manifestation of the
4260 settlor's intent regarding a trust's provisions as:

4261 (i) expressed in the trust instrument; or

4262 (ii) established by other evidence that would be admissible in a judicial proceeding;

4263 (b) the trust's provisions as established, determined, or amended by:

4264 (i) a trustee or trust director in accordance with applicable law;

4265 (ii) a court order; or

4266 (iii) a nonjudicial settlement agreement under Section [75-7-110](#);

4267 (c) for an estate, a will; or

4268 (d) for a life estate or term interest, the corresponding manifestation of the rights of the
4269 beneficiaries.

4270 (23) (a) "Trust" includes:

4271 (i) an express trust, private or charitable, with additions to the trust, wherever and
4272 however created; and

4273 (ii) a trust created or determined by judgment or decree under which the trust is to be
4274 administered in the manner of an express trust.

4275 (b) "Trust" does not include:

4276 (i) a constructive trust;

4277 (ii) a resulting trust, conservatorship, guardianship, multi-party account, custodial
4278 arrangement for a minor, business trust, voting trust, security arrangement, liquidation trust, or
4279 trust for the primary purpose of paying debts, dividends, interest, salaries, wages, profits,
4280 pensions, retirement benefits, or employee benefits of any kind; or

4281 (iii) an arrangement under which a person is a nominee, escrowee, or agent for another.

4282 (24) (a) "Trustee" means a person, other than a personal representative, that owns or
4283 holds property for the benefit of a beneficiary.

4284 (b) "Trustee" includes an original, additional, or successor trustee, whether appointed
4285 or confirmed by a court.

4286 (25) (a) "Will" means any testamentary instrument recognized by applicable law that
4287 makes a legally effective disposition of an individual's property effective at the individual's
4288 death.

4289 (b) "Will" includes a codicil or other amendment to a testamentary instrument.

4290 Section 129. Section **75A-5-102**, which is renumbered from Section 22-3-103 is
4291 renumbered and amended to read:

4292 ~~[22-3-103]~~. 75A-5-102. **Scope.**

4293 Except as otherwise provided in the terms of a trust or this chapter, this chapter applies
4294 to:

4295 (1) a trust or estate; and

4296 (2) a life estate or other term interest in which the interest of one or more persons will
4297 be succeeded by the interest of one or more other persons.

4298 Section 130. Section **75A-5-103**, which is renumbered from Section 22-3-104 is
4299 renumbered and amended to read:

4300 ~~[22-3-104]~~. 75A-5-103. **Governing law.**

4301 (1) Except as otherwise provided in the terms of a trust or this chapter, this chapter
4302 applies when this state is:

4303 (a) the principal place of administration of a trust or estate; or

4304 (b) the situs of property that is not held in a trust or estate and is subject to a life estate
4305 or other term interest described in Subsection ~~[22-3-103(2)]~~ 75A-5-102(2).

4306 (2) By accepting the trusteeship of a trust having the trust's principal place of
4307 administration in this state or by moving the principal place of administration of a trust to this
4308 state, the trustee submits to the application of this chapter to any matter within the scope of this
4309 chapter involving the trust.

4310 Section 131. Section **75A-5-201**, which is renumbered from Section 22-3-201 is
4311 renumbered and amended to read:

4312 **Part 2. Fiduciary Duties and Judicial Review**

4313 ~~[22-3-201]~~. **75A-5-201. Fiduciary duties -- General principles.**

4314 (1) In making an allocation or determination or exercising discretion under this
4315 chapter, a fiduciary shall:

- 4316 (a) act in good faith, based on what is fair and reasonable to all beneficiaries;
- 4317 (b) administer a trust or estate impartially, except to the extent the terms of the trust
4318 manifest an intent that the fiduciary shall or may favor one or more beneficiaries;
- 4319 (c) administer the trust or estate in accordance with the terms of the trust, even if there
4320 is a different provision in this chapter; and

4321 (d) administer the trust or estate in accordance with this chapter, except to the extent
4322 the terms of the trust provide otherwise or authorize the fiduciary to determine otherwise.

4323 (2) (a) A fiduciary's allocation, determination, or exercise of discretion under this
4324 chapter is presumed to be fair and reasonable to all beneficiaries.

4325 (b) A fiduciary may exercise a discretionary power of administration given to the
4326 fiduciary by the terms of the trust, and an exercise of the power that produces a result different
4327 from a result required or permitted by this chapter does not create an inference that the
4328 fiduciary abused the fiduciary's discretion.

4329 (3) A fiduciary shall:

4330 (a) add a receipt to principal, to the extent neither the terms of the trust nor this chapter
4331 allocates the receipt between income and principal; and

4332 (b) charge a disbursement to principal, to the extent neither the terms of the trust nor
4333 this chapter allocates the disbursement between income and principal.

4334 (4) If a fiduciary determines an exercise of discretionary power will assist the fiduciary
4335 to administer the trust or estate impartially, the fiduciary may:

4336 (a) exercise the power to adjust under Section ~~[22-3-203]~~ [75A-5-203](#);

- 4337 (b) convert an income trust to a unitrust under Subsection [~~22-3-303(1)(a)~~
 4338 [75A-5-303\(1\)\(a\)](#)];
- 4339 (c) change the percentage or method used to calculate a unitrust amount under
 4340 Subsection [~~22-3-303(1)(b)~~] [75A-5-303\(1\)\(b\)](#); or
- 4341 (d) convert a unitrust to an income trust under Subsection [~~22-3-303(1)(c)~~
 4342 [75A-5-303\(1\)\(c\)](#)].
- 4343 (5) In making the determination under Subsection (4), the fiduciary shall consider the
 4344 following factors:
- 4345 (a) the terms of the trust;
- 4346 (b) the nature, distribution standards, and expected duration of the trust;
- 4347 (c) the effect of the allocation rules, including specific adjustments between income
 4348 and principal, under Part 4, Allocation of Receipts, Part 5, Allocation of Disbursements, Part 6,
 4349 Death of Individual or Termination of Income Interest, and Part 7, Apportionment at Beginning
 4350 and End of Income Interest;
- 4351 (d) the desirability of liquidity and regularity of income;
- 4352 (e) the desirability of the preservation and appreciation of principal;
- 4353 (f) the extent to which an asset is used or may be used by a beneficiary;
- 4354 (g) the increase or decrease in the value of principal assets, reasonably determined by
 4355 the fiduciary;
- 4356 (h) whether and to what extent the terms of the trust:
- 4357 (i) give the fiduciary power to accumulate income or invade principal; or
- 4358 (ii) prohibit the fiduciary from accumulating income or invading principal;
- 4359 (i) the extent to which the fiduciary has accumulated income or invaded principal in
 4360 preceding accounting periods;
- 4361 (j) the effect of current and reasonably expected economic conditions; and
- 4362 (k) the reasonably expected tax consequences of the exercise of the power.
- 4363 Section 132. Section **75A-5-202**, which is renumbered from Section 22-3-202 is
 4364 renumbered and amended to read:
- 4365 [~~22-3-202~~]. **75A-5-202. Judicial review of exercise of discretionary power --**
 4366 **Request for instruction.**
- 4367 (1) In this section, "fiduciary decision" means:

- 4368 (a) a fiduciary's allocation between income and principal or other determination
4369 regarding income and principal required or authorized by the terms of the trust or this chapter;
- 4370 (b) the fiduciary's exercise or nonexercise of a discretionary power regarding income
4371 and principal granted by the terms of the trust or this chapter, including the power to:
- 4372 (i) adjust under Section [~~22-3-203~~] [75A-5-203](#);
- 4373 (ii) convert an income trust to a unitrust under Subsection [~~22-3-303(1)(a)~~]
4374 [75A-5-303\(1\)\(a\)](#);
- 4375 (iii) change the percentage or method used to calculate a unitrust amount under
4376 Subsection [~~22-3-303(1)(b)~~] [75A-5-303\(1\)\(b\)](#); or
- 4377 (iv) convert a unitrust to an income trust under Subsection [~~22-3-303(1)(c)~~]
4378 [75A-5-303\(1\)\(c\)](#); or
- 4379 (c) the fiduciary's implementation of a decision described in Subsection (1)(a) or (b).
- 4380 (2) The court may not order a fiduciary to change a fiduciary decision, unless the court
4381 determines that the fiduciary decision was an abuse of the fiduciary's discretion.
- 4382 (3) (a) If the court determines that a fiduciary decision was an abuse of the fiduciary's
4383 discretion, the court may order a remedy authorized by law, including a remedy authorized in
4384 Section [75-7-1001](#).
- 4385 (b) To place the beneficiaries in the positions that the beneficiaries would have
4386 occupied if there had not been an abuse of the fiduciary's discretion, the court may order:
- 4387 (i) the fiduciary to exercise or refrain from exercising the power to adjust under Section
4388 [~~22-3-203~~] [75A-5-203](#);
- 4389 (ii) the fiduciary to exercise or refrain from exercising the power to:
- 4390 (A) convert an income trust to a unitrust under Subsection [~~22-3-303(1)(a)~~]
4391 [75A-5-303\(1\)\(a\)](#);
- 4392 (B) change the percentage or method used to calculate a unitrust amount under
4393 Subsection [~~22-3-303(1)(b)~~] [75A-5-303\(1\)\(b\)](#); or
- 4394 (C) convert a unitrust to an income trust under Subsection [~~22-3-303(1)(c)~~]
4395 [75A-5-303\(1\)\(c\)](#);
- 4396 (iii) the fiduciary to distribute an amount to a beneficiary;
- 4397 (iv) a beneficiary to return some or all of a distribution; or
- 4398 (v) the fiduciary to withhold an amount from one or more future distributions to a

4399 beneficiary.

4400 (4) (a) On petition by a fiduciary for instruction, the court may determine whether a
4401 proposed fiduciary decision will result in an abuse of the fiduciary's discretion.

4402 (b) A beneficiary that opposes the proposed decision has the burden to establish that
4403 the proposed decision will result in an abuse of the fiduciary's discretion if the petition:

4404 (i) describes the proposed decision;

4405 (ii) contains sufficient information to inform the beneficiary of the reasons for making
4406 the proposed decision and the facts on which the fiduciary relies; and

4407 (iii) explains how the beneficiary will be affected by the proposed decision.

4408 Section 133. Section **75A-5-203**, which is renumbered from Section 22-3-203 is
4409 renumbered and amended to read:

4410 **~~[22-3-203]~~. 75A-5-203. Fiduciary's power to adjust.**

4411 (1) Except as otherwise provided in the terms of a trust or this section, a fiduciary, in a
4412 record, without court approval, may adjust between income and principal if the fiduciary
4413 determines the exercise of the power to adjust will assist the fiduciary to administer the trust or
4414 estate impartially.

4415 (2) This section does not create a duty to exercise or consider the power to adjust under
4416 Subsection (1) or to inform a beneficiary about the applicability of this section.

4417 (3) A fiduciary that in good faith exercises or fails to exercise the power to adjust under
4418 Subsection (1) is not liable to a person affected by the exercise or failure to exercise.

4419 (4) In deciding whether and to what extent to exercise the power to adjust under
4420 Subsection (1), a fiduciary shall consider all factors the fiduciary considers relevant, including
4421 the relevant factors in Subsection ~~[22-3-201(5)]~~ 75A-5-201(5) and the application of
4422 Subsection ~~[22-3-401(9)]~~ 75A-5-401(9), Section ~~[22-3-408]~~ 75A-5-408, and Section
4423 ~~[22-3-413]~~ 75A-5-413.

4424 (5) A fiduciary may not exercise the power to make an adjustment under Subsection
4425 (1) or the power to make a determination that an allocation is insubstantial under Section
4426 ~~[22-3-408]~~ 75A-5-408 if:

4427 (a) the adjustment or determination would reduce the amount payable to a current
4428 income beneficiary from a trust that qualifies for a special tax benefit, except to the extent the
4429 adjustment is made to provide for a reasonable apportionment of the total return of the trust

4430 between the current income beneficiary and successor beneficiaries;

4431 (b) the adjustment or determination would change the amount payable to a beneficiary,
4432 as a fixed annuity or a fixed fraction of the value of the trust assets, under the terms of the trust;

4433 (c) the adjustment or determination would reduce an amount that is permanently set
4434 aside for a charitable purpose under the terms of the trust, unless both income and principal are
4435 set aside for the charitable purpose;

4436 (d) possessing or exercising the power would cause a person to be treated as the owner
4437 of all or part of the trust for federal income tax purposes;

4438 (e) possessing or exercising the power would cause all or part of the value of the trust
4439 assets to be included in the gross estate of an individual for federal estate tax purposes;

4440 (f) possessing or exercising the power would cause an individual to be treated as
4441 making a gift for federal gift tax purposes;

4442 (g) the fiduciary is not an independent person;

4443 (h) the trust is irrevocable and provides for income to be paid to the settlor and
4444 possessing or exercising the power would cause the adjusted principal or income to be
4445 considered an available resource or available income under a public-benefit program; or

4446 (i) the trust is a unitrust under Part 3, Unitrust.

4447 (6) If Subsection (5)(d), (e), (f), or (g) applies to a fiduciary:

4448 (a) a co-fiduciary to which Subsections (5)(d) through (g) do not apply may exercise
4449 the power to adjust, unless the exercise of the power to adjust by the remaining co-fiduciary or
4450 co-fiduciaries is not permitted by the terms of the trust or law other than this chapter; or

4451 (b) (i) if there is no co-fiduciary to which Subsections (5)(d) through (g) do not apply:

4452 (A) except as otherwise provided in Subsection (6)(b)(ii)(A), the fiduciary may
4453 appoint a co-fiduciary to which Subsections (5)(d) through (g) do not apply;

4454 (B) except as otherwise provided in Subsection (6)(b)(ii)(B), the appointed co-fiduciary
4455 may exercise the power to adjust under Subsection (1); and

4456 (C) the appointed co-fiduciary may be a special fiduciary with limited powers.

4457 (ii) (A) If the appointment of a co-fiduciary is not permitted by the terms of the trust or
4458 by a provision of law outside this chapter, a fiduciary may not appoint a co-fiduciary.

4459 (B) If the exercise of the power to adjust by a co-fiduciary is not permitted by the terms
4460 of the trust or by a provision of law outside this chapter, the co-fiduciary may not exercise the

4461 power to adjust under Subsection (1).

4462 (7) A fiduciary may release or delegate to a co-fiduciary the power to adjust under
4463 Subsection (1) if the fiduciary determines that the fiduciary's possession or exercise of the
4464 power to adjust will or may:

4465 (a) cause a result described in Subsections (5)(a) through (f) or (h); or

4466 (b) deprive the trust of a tax benefit or impose a tax burden not described in
4467 Subsections (5)(a) through (f).

4468 (8) A fiduciary's release or delegation to a co-fiduciary under Subsection (7) of the
4469 power to adjust under Subsection (1):

4470 (a) must be in a record;

4471 (b) applies to the entire power to adjust, unless the release or delegation provides a
4472 limitation, which may be a limitation to the power to adjust:

4473 (i) from income to principal;

4474 (ii) from principal to income;

4475 (iii) for specified property; or

4476 (iv) in specified circumstances;

4477 (c) for a delegation, may be modified by a redelegation under this subsection by the
4478 co-fiduciary to which the delegation is made; and

4479 (d) subject to Subsection (8)(c), is permanent, unless the release or delegation provides
4480 a specified period, including a period measured by the life of an individual or the lives of more
4481 than one individual.

4482 (9) Terms of a trust that deny or limit the power to adjust between income and
4483 principal do not affect the application of this section, unless the terms of the trust expressly
4484 deny or limit the power to adjust under Subsection (1).

4485 (10) The exercise of the power to adjust under Subsection (1) in any accounting period
4486 may apply to the current accounting period, the immediately preceding accounting period, and
4487 one or more subsequent accounting periods.

4488 (11) A description of the exercise of the power to adjust under Subsection (1) shall be:

4489 (a) included in a report, if any, sent to beneficiaries under Subsection 75-7-811(3); or

4490 (b) communicated at least annually to the qualified beneficiaries determined under
4491 Subsection 75-7-103(1)(h).

4492 Section 134. Section **75A-5-301**, which is renumbered from Section 22-3-301 is
4493 renumbered and amended to read:

4494 **Part 3. Unitrust**

4495 **[22-3-301]. 75A-5-301. Definitions.**

4496 ~~[It]~~ As used in this part:

4497 (1) "Applicable value" means the amount of the net fair market value of a trust taken
4498 into account under Section ~~[22-3-307]~~ [75A-5-307](#).

4499 (2) "Express unitrust" means a trust for which, under the terms of the trust without
4500 regard to this part, income or net income is permitted or required to be calculated as a unitrust
4501 amount.

4502 (3) "Income trust" means a trust that is not a unitrust.

4503 (4) "Net fair market value of a trust" means the fair market value of the assets of the
4504 trust minus the noncontingent liabilities of the trust.

4505 (5) (a) "Unitrust" means a trust for which net income is a unitrust amount.

4506 (b) "Unitrust" includes an express unitrust.

4507 (6) "Unitrust amount" means:

4508 (a) an amount computed by multiplying a determined value of a trust by a determined
4509 percentage; and

4510 (b) for a unitrust administered under a unitrust policy, the applicable value multiplied
4511 by the unitrust rate.

4512 (7) "Unitrust policy" means a policy described in Sections ~~[22-3-305]~~ [75A-5-305](#)
4513 through ~~[22-3-309]~~ [75A-5-309](#) and adopted under Section ~~[22-3-303]~~ [75A-5-303](#).

4514 (8) "Unitrust rate" means the rate used to compute the unitrust amount under
4515 Subsection (6) for a unitrust administered under a unitrust policy.

4516 Section 135. Section **75A-5-302**, which is renumbered from Section 22-3-302 is
4517 renumbered and amended to read:

4518 **[22-3-302]. 75A-5-302. Application -- Duties and remedies.**

4519 (1) Except as otherwise provided in Subsection (2), this part applies to:

4520 (a) an income trust, unless the terms of the trust expressly prohibit use of this part by:

4521 (i) a specific reference to this part; or

4522 (ii) an explicit expression of intent that net income not be calculated as a unitrust

4523 amount; and

4524 (b) an express unitrust, except to the extent the terms of the trust explicitly:

4525 (i) prohibit use of this part by a specific reference to this part;

4526 (ii) prohibit conversion to an income trust; or

4527 (iii) limit changes to the method of calculating the unitrust amount.

4528 (2) This part does not apply to a trust described in Section 170(f)(2)(B), 642(c)(5),
4529 664(d), 2702(a)(3)(A)(ii) or (iii), or 2702(b) of the Internal Revenue Code.

4530 (3) (a) An income trust to which this part applies under Subsection (1)(a) may be
4531 converted to a unitrust under this part regardless of the terms of the trust concerning
4532 distributions.

4533 (b) Conversion to a unitrust under this part does not affect other terms of the trust
4534 concerning distributions of income or principal.

4535 (4) (a) This part applies to an estate only to the extent a trust is a beneficiary of the
4536 estate.

4537 (b) To the extent of the trust's interest in the estate, and in the same manner as for a
4538 trust under this part:

4539 (i) the estate may be administered as a unitrust;

4540 (ii) the administration of the estate as a unitrust may be discontinued; or

4541 (iii) the percentage or method used to calculate the unitrust amount may be changed.

4542 (5) This part does not create a duty to take or consider action under this part or to
4543 inform a beneficiary about the applicability of this part.

4544 (6) A fiduciary that in good faith takes or fails to take an action under this part is not
4545 liable to a person affected by the action or inaction of the fiduciary.

4546 Section 136. Section **75A-5-303**, which is renumbered from Section 22-3-303 is
4547 renumbered and amended to read:

4548 **[22-3-303]. 75A-5-303. Authority of fiduciary.**

4549 (1) A fiduciary, without court approval, by complying with Subsections (2) and (6),
4550 may:

4551 (a) convert an income trust to a unitrust if the fiduciary adopts, in a record, a unitrust
4552 policy for the trust providing:

4553 (i) that, in administering the trust, the net income of the trust will be a unitrust amount

4554 rather than net income determined without regard to this part; and

4555 (ii) the percentage and method used to calculate the unitrust amount;

4556 (b) change the percentage or method used to calculate a unitrust amount for a unitrust
4557 if the fiduciary adopts in a record a unitrust policy or an amendment or replacement of a
4558 unitrust policy providing changes in the percentage or method used to calculate the unitrust
4559 amount; or

4560 (c) convert a unitrust to an income trust if the fiduciary adopts, in a record, a
4561 determination that, in administering the trust, the net income of the trust will be net income
4562 determined without regard to this part rather than a unitrust amount.

4563 (2) A fiduciary may take an action under Subsection (1) if:

4564 (a) the fiduciary determines that the action will assist the fiduciary to administer a trust
4565 impartially;

4566 (b) the fiduciary sends a notice in a record, in the manner required by Section
4567 ~~[22-3-304]~~ [75A-5-304](#), describing and proposing to take the action;

4568 (c) the fiduciary sends a copy of the notice under Subsection (2)(b) to each settlor of
4569 the trust which is:

4570 (i) if an individual, living; or

4571 (ii) if not an individual, in existence;

4572 (d) at least one member of each class of the qualified beneficiaries determined under
4573 Subsection [75-7-103](#)(1)(h) receiving the notice under Subsection (2)(b) is:

4574 (i) if an individual, legally competent;

4575 (ii) if not an individual, in existence; or

4576 (iii) represented in the manner provided in Subsection ~~[22-3-304(2)]~~ [75A-5-304\(2\)](#);

4577 and

4578 (e) the fiduciary does not receive, by the date specified in the notice under Subsection
4579 ~~[22-3-304(4)(e)]~~ [75A-5-304\(4\)\(e\)](#), an objection in a record to the action proposed under
4580 Subsection (2)(b) from a person to which the notice under Subsection (2)(b) is sent.

4581 (3) (a) If a fiduciary receives, not later than the date stated in the notice under
4582 Subsection ~~[22-3-304(4)(e)]~~ [75A-5-304\(4\)\(e\)](#), an objection in a record described in Subsection
4583 ~~[22-3-304(4)(d)]~~ [75A-5-304\(4\)\(d\)](#) to a proposed action, the fiduciary or a beneficiary may
4584 request that the court:

- 4585 (i) require the fiduciary to take the proposed action;
- 4586 (ii) require the fiduciary to take the proposed action with modifications; or
- 4587 (iii) prevent the proposed action.
- 4588 (b) A person described in Subsection [~~22-3-304(1)~~] [75A-5-304\(1\)](#) may oppose the
- 4589 proposed action in the proceeding under Subsection (3)(a), regardless of whether the person:
- 4590 (i) consented under Subsection [~~22-3-304(3)~~] [75A-5-304\(3\)](#); or
- 4591 (ii) objected under Subsection [~~22-3-304(4)(d)~~] [75A-5-304\(4\)\(d\)](#).
- 4592 (4) If, after sending a notice under Subsection (2)(b), a fiduciary decides not to take the
- 4593 action proposed in the notice, the fiduciary shall notify each person described in Subsection
- 4594 [~~22-3-304(1)~~] [75A-5-304\(1\)](#) in a record of the decision not to take the action and the reasons
- 4595 for the decision.
- 4596 (5) If a beneficiary requests in a record that a fiduciary take an action described in
- 4597 Subsection (1) and the fiduciary declines to act or does not act within 90 days after receiving
- 4598 the request, the beneficiary may request the court to direct the fiduciary to take the action
- 4599 requested.
- 4600 (6) In deciding whether and how to take an action authorized by Subsection (1), or
- 4601 whether and how to respond to a request by a beneficiary under Subsection (5), a fiduciary
- 4602 shall consider all factors relevant to the trust and the beneficiaries, including the relevant
- 4603 factors in Subsection [~~22-3-201(5)~~] [75A-5-201\(5\)](#).
- 4604 (7) For a reason described in Subsection [~~22-3-203(7)~~] [75A-5-203\(7\)](#), and in the
- 4605 manner described in Subsection [~~22-3-203(8)~~] [75A-5-203\(8\)](#), a fiduciary may:
- 4606 (a) release or delegate the power to convert an income trust to a unitrust under
- 4607 Subsection (1)(a);
- 4608 (b) change the percentage or method used to calculate a unitrust amount under
- 4609 Subsection (1)(b); or
- 4610 (c) convert a unitrust to an income trust under Subsection (1)(c).
- 4611 Section 137. Section **75A-5-304**, which is renumbered from Section 22-3-304 is
- 4612 renumbered and amended to read:
- 4613 [~~22-3-304~~]. **[75A-5-304](#). Notice.**
- 4614 (1) A fiduciary shall send a notice required by Subsection [~~22-3-303(2)(b)~~]
- 4615 [75A-5-303\(2\)\(b\)](#) in a manner authorized under Section [75-7-109](#) to:

- 4616 (a) the qualified beneficiaries determined under Subsection [75-7-103\(1\)\(h\)](#);
- 4617 (b) each person acting, in accordance with Title 75, Chapter 12, Uniform Directed
- 4618 Trust Act, as trust director of the trust; and
- 4619 (c) each person that is granted a power by the terms of the trust to appoint or remove a
- 4620 trustee or person described in Subsection (1)(b), to the extent the power is exercisable when the
- 4621 person that exercises the power is not then serving as trustee or is a person described in
- 4622 Subsection (1)(b).
- 4623 (2) The representation provisions of Sections [75-7-301](#) through [75-7-305](#) apply to
- 4624 notice under this section.
- 4625 (3) (a) A person may consent in a record at any time to action proposed under
- 4626 Subsection [~~[22-3-303\(2\)\(b\)](#)~~ [75A-5-303\(2\)\(b\)](#)].
- 4627 (b) If a person required to receive a notice under Subsection (1) consents under
- 4628 Subsection (3)(a) to not receive the notice, the fiduciary is not required to send the person the
- 4629 notice.
- 4630 (4) A notice required by Subsection [~~[22-3-303\(2\)\(b\)](#)~~ [75A-5-303\(2\)\(b\)](#)] shall include:
- 4631 (a) the action proposed under Subsection [~~[22-3-303\(2\)\(b\)](#)~~ [75A-5-303\(2\)\(b\)](#)];
- 4632 (b) for a conversion of an income trust to a unitrust, a copy of the unitrust policy
- 4633 adopted under Subsection [~~[22-3-303\(1\)\(a\)](#)~~ [75A-5-303\(1\)\(a\)](#)];
- 4634 (c) for a change in the percentage or method used to calculate the unitrust amount, a
- 4635 copy of the unitrust policy or amendment or replacement of the unitrust policy adopted under
- 4636 Subsection [~~[22-3-303\(1\)\(b\)](#)~~ [75A-5-303\(1\)\(b\)](#)];
- 4637 (d) a statement that the person to which the notice is sent may object to the proposed
- 4638 action by stating in a record the basis for the objection and sending or delivering the record to
- 4639 the fiduciary;
- 4640 (e) the date by which the fiduciary shall receive an objection under Subsection (4)(d),
- 4641 which shall be at least 30 days after the date the notice is sent;
- 4642 (f) the date on which the action is proposed to be taken and the date on which the
- 4643 action is proposed to take effect;
- 4644 (g) the name and contact information of the fiduciary; and
- 4645 (h) the name and contact information of a person that may be contacted for additional
- 4646 information.

4647 Section 138. Section **75A-5-305**, which is renumbered from Section 22-3-305 is
 4648 renumbered and amended to read:

4649 ~~[22-3-305]~~. **75A-5-305. Unitrust policy.**

4650 (1) In administering a unitrust under this part, a fiduciary shall follow a unitrust policy:

4651 (a) adopted under Subsection ~~[22-3-303(1)(a)]~~ 75A-5-303(1)(a) or (b); or

4652 (b) amended or replaced under Subsection ~~[22-3-303(1)(b)]~~ 75A-5-303(1)(b).

4653 (2) A unitrust policy shall provide:

4654 (a) the unitrust rate or the method for determining the unitrust rate under Section

4655 ~~[22-3-306]~~ 75A-5-306;

4656 (b) the method for determining the applicable value under Section ~~[22-3-307]~~

4657 75A-5-307; and

4658 (c) the rules described in Sections ~~[22-3-306]~~ 75A-5-306 through ~~[22-3-309]~~

4659 75A-5-309 that apply in the administration of the unitrust, regardless of whether the rules are:

4660 (i) mandatory, as provided in Subsections ~~[22-3-307(1)]~~ 75A-5-307(1) and

4661 ~~[22-3-308(1)]~~ 75A-5-308(1); or

4662 (ii) optional, as provided in Section ~~[22-3-306]~~ 75A-5-306 and Subsections

4663 ~~[22-3-307(2), 22-3-308(2), and 22-3-309(1)]~~ 75A-5-307(2), 75A-5-308(2), and 75A-5-309(1),

4664 to the extent the fiduciary elects to adopt those rules.

4665 Section 139. Section **75A-5-306**, which is renumbered from Section 22-3-306 is
 4666 renumbered and amended to read:

4667 ~~[22-3-306]~~. **75A-5-306. Unitrust rate.**

4668 (1) Except as otherwise provided in Subsection ~~[22-3-309(2)(a)]~~ 75A-5-309(2)(a), a
 4669 unitrust rate may be:

4670 (a) a fixed unitrust rate; or

4671 (b) a unitrust rate that is determined for each period using:

4672 (i) a market index or other published data; or

4673 (ii) a mathematical blend of market indices or other published data over a stated
 4674 number of preceding periods.

4675 (2) Except as otherwise provided in Subsection ~~[22-3-309(2)(a)]~~ 75A-5-309(2)(a), a
 4676 unitrust policy may provide:

4677 (a) a limit on how high the unitrust rate determined under Subsection (1)(b) may rise;

4678 (b) a limit on how low the unitrust rate determined under Subsection (1)(b) may fall;

4679 (c) a limit on how much the unitrust rate determined under Subsection (1)(b) may

4680 increase over the unitrust rate for the preceding period or a mathematical blend of unitrust rates

4681 over a stated number of preceding periods;

4682 (d) a limit on how much the unitrust rate determined under Subsection (1)(b) may

4683 decrease below the unitrust rate for the preceding period or a mathematical blend of unitrust

4684 rates over a stated number of preceding periods; or

4685 (e) a mathematical blend of any of the unitrust rates determined under Subsection

4686 (1)(b) and Subsections (2)(a) through (d).

4687 Section 140. Section **75A-5-307**, which is renumbered from Section 22-3-307 is

4688 renumbered and amended to read:

4689 **[22-3-307]. 75A-5-307. **Applicable value.****

4690 (1) A unitrust policy shall provide the method for determining the fair market value of
4691 an asset for the purpose of determining the unitrust amount, including:

4692 (a) the frequency of valuing the asset, which need not require a valuation in every
4693 period; and

4694 (b) the date for valuing the asset in each period that the asset is valued.

4695 (2) Except as otherwise provided in Subsection ~~[22-3-309(2)(b)]~~ 75A-5-309(2)(b), a
4696 unitrust policy may provide methods for determining the amount of the net fair market value of
4697 the trust to take into account in determining the applicable value, including:

4698 (a) obtaining an appraisal of an asset for which fair market value is not readily
4699 available;

4700 (b) exclusion of specific assets or groups or types of assets;

4701 (c) other exceptions or modifications of the treatment of specific assets or groups or
4702 types of assets;

4703 (d) identification and treatment of cash or property held for distribution;

4704 (e) use of:

4705 (i) an average of fair market values over a stated number of preceding periods; or

4706 (ii) another mathematical blend of fair market values over a stated number of preceding
4707 periods;

4708 (f) a limit on how much the applicable value of all assets, groups of assets, or

4709 individual assets may increase over:

- 4710 (i) the corresponding applicable value for the preceding period; or
 4711 (ii) a mathematical blend of applicable values over a stated number of preceding time
 4712 periods;

4713 (g) a limit on how much the applicable value of all assets, groups of assets, or
 4714 individual assets may decrease below:

- 4715 (i) the corresponding applicable value for the preceding period; or
 4716 (ii) a mathematical blend of applicable values over a stated number of preceding
 4717 periods;
 4718 (h) the treatment of accrued income and other features of an asset that affect value; and
 4719 (i) determining the liabilities of the trust, including treatment of liabilities to conform
 4720 with the treatment of assets under Subsections (2)(a) through (h).

4721 Section 141. Section **75A-5-308**, which is renumbered from Section 22-3-308 is
 4722 renumbered and amended to read:

4723 ~~[22-3-308]~~. **75A-5-308. Period.**

4724 (1) (a) A unitrust policy shall provide the period used under Sections ~~[22-3-306 and~~
 4725 ~~22-3-307]~~ [75A-5-306](#) and [75A-5-307](#).

4726 (b) Except as otherwise provided in Subsection ~~[22-3-309(2)(e)]~~ [75A-5-309\(2\)\(c\)](#), the
 4727 period may be:

- 4728 (i) a calendar year;
 4729 (ii) a 12-month period other than a calendar year;
 4730 (iii) a calendar quarter;
 4731 (iv) a three-month period other than a calendar quarter; or
 4732 (v) another period.

4733 (2) Except as otherwise provided in Subsection ~~[22-3-309(2)]~~ [75A-5-309\(2\)](#), a unitrust
 4734 policy may provide standards for:

4735 (a) using fewer preceding periods under Subsection ~~[22-3-306(1)(b)(ii)]~~
 4736 [75A-5-306\(1\)\(b\)\(ii\)](#), (2)(c), or (2)(d) if:

- 4737 (i) the trust was not in existence in a preceding period; or
 4738 (ii) market indices or other published data are not available for a preceding period;
 4739 (b) using fewer preceding periods under Subsection ~~[22-3-307(2)(c)(i) or (ii)]~~

4740 [75A-5-307\(2\)\(e\)\(i\), \(e\)\(ii\), \(f\)\(ii\), or \(g\)\(ii\)](#) if:

- 4741 (i) the trust was not in existence in a preceding period; or
4742 (ii) fair market values are not available for a preceding period; and
4743 (c) prorating the unitrust amount on a daily basis for a part of a period in which the
4744 trust or the administration of the trust as a unitrust or the interest of any beneficiary commences
4745 or terminates.

4746 Section 142. Section **75A-5-309**, which is renumbered from Section 22-3-309 is
4747 renumbered and amended to read:

4748 ~~[22-3-309]~~. **[75A-5-309](#). Special tax benefits -- Other rules.**

4749 (1) A unitrust policy may:

4750 (a) provide methods and standards for:

- 4751 (i) determining the timing of distributions;
4752 (ii) making distributions in cash or in kind or partly in cash and partly in kind; or
4753 (iii) correcting an underpayment or overpayment to a beneficiary based on the unitrust
4754 amount if there is an error in calculating the unitrust amount;

4755 (b) specify sources and the order of sources, including categories of income for federal
4756 income tax purposes, from which distributions of a unitrust amount are paid; or

4757 (c) provide other standards and rules the fiduciary determines serve the interests of the
4758 beneficiaries.

4759 (2) If a trust qualifies for a special tax benefit or a fiduciary is not an independent
4760 person:

4761 (a) the unitrust rate established under Section ~~[22-3-306]~~ [75A-5-306](#) may not be less
4762 than 3% or more than 5%;

4763 (b) the only provisions of Section ~~[22-3-307]~~ [75A-5-307](#) that apply are Subsections
4764 ~~[22-3-307(1)]~~ [75A-5-307\(1\)](#) and (2)(a), (d), (e)(i), and (i);

4765 (c) the only period that may be used under Section ~~[22-3-308]~~ [75A-5-308](#) is a calendar
4766 year under Subsection ~~[22-3-308(1)]~~ [75A-5-308\(1\)](#); and

4767 (d) the only other provisions of Section ~~[22-3-308]~~ [75A-5-308](#) that apply are

4768 ~~[Subsection 22-3-308(2)(b)(i)]~~ Subsections [75A-5-308\(2\)\(b\)\(i\)](#) and (c).

4769 Section 143. Section **75A-5-401**, which is renumbered from Section 22-3-401 is
4770 renumbered and amended to read:

4771
4772
4773
4774
4775
4776
4777
4778
4779
4780
4781
4782
4783
4784
4785
4786
4787
4788
4789
4790
4791
4792
4793
4794
4795
4796
4797
4798
4799
4800
4801

Part 4. Allocation of Receipts

~~[22-3-401]~~. 75A-5-401. Receipts from entity -- Character of receipts from entity.

(1) ~~[In]~~ As used in this section:

(a) "Capital distribution" means an entity distribution of money that is a:

(i) return of capital; or

(ii) distribution in total or partial liquidation of the entity.

(b) (i) "Entity" means a corporation, partnership, limited liability company, regulated investment company, real estate investment trust, common trust fund, or any other organization or arrangement in which a fiduciary owns or holds an interest, regardless of whether the entity is a taxpayer for federal income tax purposes.

(ii) "Entity" does not include:

(A) a trust or estate to which Section ~~[22-3-402]~~ 75A-5-402 applies;

(B) a business or other activity to which Section ~~[22-3-403]~~ 75A-5-403 applies that is not conducted by an entity described in Subsection (1)(b)(i);

(C) an asset-backed security; or

(D) an instrument or arrangement to which Section ~~[22-3-416]~~ 75A-5-416 applies.

(c) "Entity distribution" means a payment or transfer by an entity made to a person in the person's capacity as an owner or holder of an interest in the entity.

(2) In this section, an attribute or action of an entity includes an attribute or action of any other entity in which the entity owns or holds an interest, including an interest owned or held indirectly through another entity.

(3) Except as otherwise provided in Subsections (4)(b) through (d), a fiduciary shall allocate to income:

(a) money received in an entity distribution; and

(b) tangible personal property of nominal value received from the entity.

(4) A fiduciary shall allocate to principal:

(a) property received in an entity distribution that is not:

(i) money; or

(ii) tangible personal property of nominal value;

(b) money received in an entity distribution in an exchange for part or all of the

4802 fiduciary's interest in the entity, to the extent the entity distribution reduces the fiduciary's
4803 interest in the entity relative to the interests of other persons that own or hold interests in the
4804 entity;

4805 (c) money received in an entity distribution that the fiduciary determines or estimates is
4806 a capital distribution; and

4807 (d) money received in an entity distribution from an entity that is:

4808 (i) a regulated investment company or real estate investment trust if the money
4809 received is a capital gain dividend for federal income tax purposes; or

4810 (ii) treated for federal income tax purposes in a comparable manner to the treatment
4811 described in Subsection (4)(d)(i).

4812 (5) A fiduciary may determine or estimate that money received in an entity distribution
4813 is a capital distribution:

4814 (a) by relying without inquiry or investigation on a characterization of the entity
4815 distribution provided by or on behalf of the entity, unless the fiduciary:

4816 (i) determines, on the basis of information known to the fiduciary, that the
4817 characterization is or may be incorrect; or

4818 (ii) owns or holds more than 50% of the voting interest in the entity;

4819 (b) by determining or estimating, on the basis of information known to the fiduciary or
4820 provided to the fiduciary by or on behalf of the entity, that the total amount of money and
4821 property received by the fiduciary in the entity distribution or a series of related entity
4822 distributions is or will be greater than 20% of the fair market value of the fiduciary's interest in
4823 the entity; or

4824 (c) if neither Subsection (5)(a) nor (b) applies, by considering the factors in Subsection
4825 (6) and the information known to the fiduciary or provided to the fiduciary by or on behalf of
4826 the entity.

4827 (6) In making a determination or estimate under Subsection (5)(c), a fiduciary may
4828 consider:

4829 (a) a characterization of an entity distribution provided by or on behalf of the entity;

4830 (b) the amount of money or property received in:

4831 (i) the entity distribution; or

4832 (ii) what the fiduciary determines is or will be a series of related entity distributions;

4833 (c) the amount described in Subsection (6)(b) compared to the amount that the
4834 fiduciary determines or estimates is, during the current or preceding accounting periods:
4835 (i) the entity's operating income;
4836 (ii) the proceeds of the entity's sale or other disposition of:
4837 (A) all or part of the business or other activity conducted by the entity;
4838 (B) one or more business assets that are not sold to customers in the ordinary course of
4839 the business or other activity conducted by the entity; or
4840 (C) one or more assets other than business assets, unless the entity's primary activity is
4841 to invest in assets to realize gain on the disposition of all or some of the assets;
4842 (iii) if the entity's primary activity is to invest in assets to realize gain on the disposition
4843 of all or some of the assets, the gain realized on the disposition;
4844 (iv) the entity's regular, periodic entity distributions;
4845 (v) the amount of money that the entity has accumulated;
4846 (vi) the amount of money that the entity has borrowed;
4847 (vii) the amount of money that the entity has received from the sources described in
4848 Sections [~~22-3-407, 22-3-410, 22-3-411, and 22-3-412~~] 75A-5-407, 75A-5-410, 75A-5-411,
4849 and 75A-5-412; and
4850 (viii) the amount of money that the entity has received from a source not otherwise
4851 described in this subsection; and
4852 (d) any other factor the fiduciary determines is relevant.
4853 (7) If, after applying Subsections (3) through (6), a fiduciary determines that a part of
4854 an entity distribution is a capital distribution but the fiduciary is in doubt about the amount of
4855 the entity distribution that is a capital distribution, the fiduciary shall allocate to principal the
4856 amount of the entity distribution that is in doubt.
4857 (8) If a fiduciary receives additional information about the application of this section to
4858 an entity distribution before the fiduciary has paid part of the entity distribution to a
4859 beneficiary, the fiduciary may consider the additional information before making the payment
4860 to the beneficiary and may change a decision to make the payment to the beneficiary.
4861 (9) If a fiduciary receives additional information about the application of this section to
4862 an entity distribution after the fiduciary has paid part of the entity distribution to a beneficiary,
4863 the fiduciary is not required to change or recover the payment to the beneficiary but may

4864 consider that information in determining whether to exercise the power to adjust under Section
4865 ~~[22-3-203]~~ 75A-5-203.

4866 Section 144. Section **75A-5-402**, which is renumbered from Section 22-3-402 is
4867 renumbered and amended to read:

4868 ~~[22-3-402]~~. **75A-5-402. Receipts from entity -- Distribution from trust or estate.**

4869 (1) A fiduciary shall allocate:

4870 (a) to income an amount received as a distribution of income, including a unitrust
4871 distribution under Part 3, Unitrust, from a trust or estate in which the fiduciary has an interest,
4872 other than an interest the fiduciary purchased in a trust that is an investment entity; and

4873 (b) to principal an amount received as a distribution of principal from the trust or
4874 estate.

4875 (2) If a fiduciary purchases, or receives from a settlor, an interest in a trust that is an
4876 investment entity, Section ~~[22-3-401, 22-3-415, or 22-3-416]~~ 75A-5-401, 75A-5-415, and
4877 75A-5-416 applies to a receipt from the trust.

4878 Section 145. Section **75A-5-403**, which is renumbered from Section 22-3-403 is
4879 renumbered and amended to read:

4880 ~~[22-3-403]~~. **75A-5-403. Receipts from entity -- Business or other activity**
4881 **conducted by fiduciary.**

4882 (1) This section applies to a business or other activity conducted by a fiduciary if the
4883 fiduciary determines that it is in the interests of the beneficiaries to account separately for the
4884 business or other activity instead of:

4885 (a) accounting for the business or other activity as part of the fiduciary's general
4886 accounting records; or

4887 (b) conducting the business or other activity through an entity described in Subsection
4888 ~~[22-3-401(1)(b)(i)]~~ 75A-5-401(1)(b)(i).

4889 (2) A fiduciary may account separately under this section for the transactions of a
4890 business or other activity, whether or not assets of the business or other activity are segregated
4891 from other assets held by the fiduciary.

4892 (3) A fiduciary that accounts separately under this section for a business or other
4893 activity:

4894 (a) may determine:

4895 (i) the extent to which the net cash receipts of the business or other activity shall be
4896 retained for:

4897 (A) working capital;

4898 (B) the acquisition or replacement of fixed assets; and

4899 (C) other reasonably foreseeable needs of the business or other activity; and

4900 (ii) the extent that the remaining net cash receipts are accounted for as principal or
4901 income in the fiduciary's general accounting records for the trust;

4902 (b) may make a determination under Subsection (3)(a) separately and differently from
4903 the fiduciary's decisions concerning distributions of income or principal; and

4904 (c) shall account for the net amount received from the sale of an asset of the business
4905 or other activity, other than a sale in the ordinary course of the business or other activity, as
4906 principal in the fiduciary's general accounting records for the trust, to the extent the fiduciary
4907 determines that the net amount received is no longer required in the conduct of the business or
4908 other activity.

4909 (4) A fiduciary may account separately under this section for activities that include:

4910 (a) retail, manufacturing, service, and other traditional business activities;

4911 (b) farming;

4912 (c) raising and selling livestock and other animals;

4913 (d) managing rental properties;

4914 (e) extracting minerals, water, and other natural resources;

4915 (f) growing and cutting timber;

4916 (g) an activity to which [~~Section 22-3-414, 22-3-415, or 22-3-416~~] Sections

4917 75A-5-414, 75A-5-415, or 75A-5-416 applies; and

4918 (h) any other business conducted by the fiduciary.

4919 Section 146. Section ~~75A-5-404~~, which is renumbered from Section 22-3-404 is
4920 renumbered and amended to read:

4921 ~~[22-3-404]~~. 75A-5-404. **Receipts not normally apportioned -- Principal receipts.**

4922 A fiduciary shall allocate to principal:

4923 (1) to the extent not allocated to income under this chapter, an asset received from:

4924 (a) an individual during the individual's lifetime;

4925 (b) an estate;

- 4926 (c) a trust on termination of an income interest; or
4927 (d) a payor under a contract naming the fiduciary as beneficiary;
4928 (2) except as otherwise provided in this part, money or other property received from
4929 the sale, exchange, liquidation, or change in form of a principal asset;
4930 (3) an amount recovered from a third party to reimburse the fiduciary because of a
4931 disbursement described in Subsection [~~22-3-502~~(1)] 75A-5-502(1) or for another reason to the
4932 extent not based on loss of income;
4933 (4) proceeds of property taken by eminent domain, except that proceeds awarded for
4934 loss of income in an accounting period are income if a current income beneficiary had a
4935 mandatory income interest during the accounting period;
4936 (5) net income received in an accounting period during which there is no beneficiary to
4937 which a fiduciary is permitted or required to distribute income; and
4938 (6) other receipts as provided in Part 3, Unitrust.

4939 Section 147. Section **75A-5-405**, which is renumbered from Section 22-3-405 is
4940 renumbered and amended to read:

4941 [~~22-3-405~~]. **75A-5-405. Receipts not normally apportioned -- Rental property.**

4942 (1) To the extent a fiduciary does not account for the management of rental property as
4943 a business under Section [~~22-3-403~~] 75A-5-403, the fiduciary shall allocate to income an
4944 amount received as rent of real or personal property, including an amount received for
4945 cancellation or renewal of a lease.

4946 (2) An amount received as a refundable deposit, including a security deposit or a
4947 deposit that is to be applied as rent for future periods:

4948 (a) shall be added to principal and held subject to the terms of the lease, except as
4949 otherwise provided by law other than this chapter; and

4950 (b) is not allocated to income or available for distribution to a beneficiary until the
4951 fiduciary's contractual obligations have been satisfied with respect to that amount.

4952 Section 148. Section **75A-5-406**, which is renumbered from Section 22-3-406 is
4953 renumbered and amended to read:

4954 [~~22-3-406~~]. **75A-5-406. Receipts not normally apportioned -- Receipt on
4955 obligation to be paid in money.**

4956 (1) This section does not apply to an obligation to which Section [~~22-3-409~~, ~~22-3-410~~;

4957 ~~22-3-411, 22-3-412, 22-3-414, 22-3-415, or 22-3-416~~ 75A-5-409, 75A-5-410, 75A-5-411,
4958 75A-5-412, 75A-5-414, 75A-5-415, or 75A-5-416 applies.

4959 (2) A fiduciary shall allocate to income, without provision for amortization of
4960 premium, an amount received as interest on an obligation to pay money to the fiduciary,
4961 including an amount received as consideration for prepaying principal.

4962 (3) (a) A fiduciary shall allocate to principal an amount received from the sale,
4963 redemption, or other disposition of an obligation to pay money to the fiduciary.

4964 (b) A fiduciary shall allocate to income the increment in value of a bond or other
4965 obligation for the payment of money bearing no stated interest but payable or redeemable, at
4966 maturity or another future time, in an amount that exceeds the amount in consideration of
4967 which it was issued.

4968 Section 149. Section **75A-5-407**, which is renumbered from Section 22-3-407 is
4969 renumbered and amended to read:

4970 ~~[22-3-407]~~. **75A-5-407. Receipts not normally apportioned -- Insurance policy**
4971 **or contract.**

4972 (1) This section does not apply to a contract to which Section ~~[22-3-409]~~ 75A-5-409
4973 applies.

4974 (2) (a) Except as otherwise provided in Subsection (3), a fiduciary shall allocate to
4975 principal the proceeds of a life insurance policy or other contract received by the fiduciary as
4976 beneficiary, including a contract that insures against damage to, destruction of, or loss of title to
4977 an asset.

4978 (b) The fiduciary shall allocate dividends on an insurance policy:

- 4979 (i) to income, to the extent premiums on the policy are paid from income; and
4980 (ii) to principal, to the extent premiums on the policy are paid from principal.

4981 (3) A fiduciary shall allocate to income proceeds of a contract that insures the fiduciary
4982 against loss of:

4983 (a) occupancy or other use by a current income beneficiary;

4984 (b) income; or

4985 (c) subject to Section ~~[22-3-403]~~ 75A-5-403, profits from a business.

4986 Section 150. Section **75A-5-408**, which is renumbered from Section 22-3-408 is
4987 renumbered and amended to read:

4988 ~~[22-3-408]~~. 75A-5-408. **Receipts normally apportioned -- Insubstantial**
4989 **allocation not required.**

4990 (1) If a fiduciary determines that an allocation between income and principal required
4991 by Section ~~[22-3-409, 22-3-410, 22-3-411, 22-3-412, or 22-3-415]~~ 75A-5-409, 75A-5-410,
4992 75A-5-411, 75A-5-412, or 75A-5-415 is insubstantial, the fiduciary may allocate the entire
4993 amount to principal, unless Subsection ~~[22-3-203(5)]~~ 75A-5-203(5) applies to the allocation.

4994 (2) A fiduciary may presume an allocation is insubstantial under Subsection (1) if:

4995 (a) the amount of the allocation would increase or decrease net income in an
4996 accounting period, as determined before the allocation, by less than 10%; and

4997 (b) the asset producing the receipt to be allocated has a fair market value less than 10%
4998 of the total fair market value of the assets owned or held by the fiduciary at the beginning of the
4999 accounting period.

5000 (3) The power to make a determination under Subsection (1) may be:

5001 (a) exercised by a co-fiduciary in the manner described in Subsection ~~[22-3-203(6)]~~

5002 75A-5-203(6); or

5003 (b) released or delegated for a reason described in Subsection ~~[22-3-203(7)]~~

5004 75A-5-203(7) and in the manner described in Subsection ~~[22-3-203(8)]~~ 75A-5-203(8).

5005 Section 151. Section **75A-5-409**, which is renumbered from Section 22-3-409 is
5006 renumbered and amended to read:

5007 ~~[22-3-409]~~. 75A-5-409. **Receipts normally apportioned -- Deferred**
5008 **compensation, annuity, or similar payment.**

5009 (1) ~~[In]~~ As used in this section:

5010 (a) "Internal income of a separate fund" means the amount determined under
5011 Subsection (2).

5012 (b) "Marital trust" means a trust:

5013 (i) of which the settlor's surviving spouse is the only current income beneficiary and is
5014 entitled to a distribution of all the current net income of the trust; and

5015 (ii) that qualifies for a marital deduction with respect to the settlor's estate under
5016 Section 2056 of the Internal Revenue Code because:

5017 (A) an election to qualify for a marital deduction under Section 2056(b)(7) of the
5018 Internal Revenue Code has been made; or

5019 (B) the trust qualifies for a marital deduction under Section 2056(b)(5) of the Internal
5020 Revenue Code.

5021 (c) (i) "Payment" means an amount a fiduciary may receive over a fixed number of
5022 years or during the life of one or more individuals because of services rendered or property
5023 transferred to the payor in exchange for future amounts the fiduciary may receive.

5024 (ii) "Payment" includes an amount received in money or property from the payor's
5025 general assets or from a separate fund created by the payor.

5026 (d) "Separate fund" includes a private or commercial annuity, an individual retirement
5027 account, and a pension, profit-sharing, stock-bonus, or stock-ownership plan.

5028 (2) For each accounting period, and for each separate fund:

5029 (a) the fiduciary shall determine the internal income of the separate fund as if the
5030 separate fund were a trust subject to this chapter;

5031 (b) if the fiduciary cannot determine the internal income of the separate fund under
5032 Subsection (2)(a), the internal income of the separate fund is deemed to equal 3% of the value
5033 of the separate fund, according to the most recent statement of value preceding the beginning of
5034 the accounting period; and

5035 (c) if the fiduciary cannot determine the value of the separate fund under Subsection
5036 (2)(b), the value of the separate fund is deemed to equal the present value of the expected
5037 future payments, as determined under Section 7520 of the Internal Revenue Code, for the
5038 month preceding the beginning of the accounting period for which the computation is made.

5039 (3) A fiduciary shall allocate a payment received from a separate fund during an
5040 accounting period to income, to the extent of the internal income of the separate fund during
5041 the accounting period, and the balance to principal.

5042 (4) The fiduciary of a marital trust shall:

5043 (a) withdraw from a separate fund the amount the current income beneficiary of the
5044 trust requests the fiduciary to withdraw, not greater than the amount by which the internal
5045 income of the separate fund during the accounting period exceeds the amount the fiduciary
5046 otherwise receives from the separate fund during the accounting period;

5047 (b) transfer from principal to income the amount the current income beneficiary
5048 requests the fiduciary to transfer, not greater than the amount by which the internal income of
5049 the separate fund during the accounting period exceeds the amount the fiduciary receives from

5050 the separate fund during the accounting period after the application of Subsection (4)(a); and
5051 (c) distribute to the current income beneficiary as income:
5052 (i) the amount of the internal income of the separate fund received or withdrawn during
5053 the accounting period; and
5054 (ii) the amount transferred from principal to income under Subsection (4)(b).
5055 (5) For a trust, other than a marital trust, of which one or more current income
5056 beneficiaries are entitled to a distribution of all the current net income, the fiduciary shall
5057 transfer from principal to income the amount by which the internal income of a separate fund
5058 during the accounting period exceeds the amount the fiduciary receives from the separate fund
5059 during the accounting period.

5060 Section 152. Section ~~75A-5-410~~, which is renumbered from Section 22-3-410 is
5061 renumbered and amended to read:

5062 ~~[22-3-410]~~. **75A-5-410. Receipts normally apportioned -- Liquidating asset.**

5063 (1) ~~[It]~~ As used in this section:

5064 (a) "Liquidating asset" means an asset whose value will diminish or terminate because
5065 the asset is expected to produce receipts for a limited time.

5066 (b) "Liquidating asset" includes a leasehold, patent, copyright, royalty right, and right
5067 to receive payments during a period of more than one year under an arrangement that does not
5068 provide for the payment of interest on the unpaid balance.

5069 (2) This section does not apply to a receipt subject to Section [~~22-3-401, 22-3-409,~~
5070 ~~22-3-411, 22-3-412, 22-3-414, 22-3-415, 22-3-416, or 22-3-503~~] 75A-5-401, 75A-5-409,
5071 75A-5-411, 75A-5-412, 75A-5-414, 75A-5-415, 75A-5-416, or 75A-5-503.

5072 (3) A fiduciary shall allocate:

5073 (a) to income:

5074 (i) a receipt produced by a liquidating asset, to the extent the receipt does not exceed
5075 3% of the value of the asset; or

5076 (ii) if the fiduciary cannot determine the value of the asset, 10% of the receipt; and

5077 (b) to principal, the balance of the receipt.

5078 Section 153. Section ~~75A-5-411~~, which is renumbered from Section 22-3-411 is
5079 renumbered and amended to read:

5080 ~~[22-3-411]~~. **75A-5-411. Receipts normally apportioned -- Minerals, water, and**

5081 **other natural resources.**

5082 (1) To the extent that a fiduciary does not account for a receipt from an interest in
5083 minerals, water, or other natural resources as a business under Section ~~[22-3-403]~~ 75A-5-403,
5084 the fiduciary shall allocate the receipt:

5085 (a) to income, to the extent received:

5086 (i) as delay rental or annual rent on a lease;

5087 (ii) as a factor for interest or the equivalent of interest under an agreement creating a
5088 production payment; or

5089 (iii) on account of an interest in renewable water;

5090 (b) to principal, if received from a production payment, to the extent that Subsection
5091 (1)(a)(ii) does not apply; or

5092 (c) between income and principal equitably, to the extent received:

5093 (i) on account of an interest in nonrenewable water;

5094 (ii) as a royalty, shut-in-well payment, take-or-pay payment, or bonus; or

5095 (iii) from a working interest or any other interest not provided for in Subsection (1)(a)
5096 or (b) or Subsection (1)(c)(i) or (ii).

5097 (2) This section applies to an interest owned or held by a fiduciary regardless of
5098 whether a settlor was extracting minerals, water, or other natural resources before the fiduciary
5099 owned or held the interest.

5100 (3) An allocation of a receipt under Subsection (1)(c) is presumed to be equitable if the
5101 amount allocated to principal is equal to the amount allowed by the Internal Revenue Code as a
5102 deduction for depletion of the interest.

5103 (4) (a) If a fiduciary owns or holds an interest in minerals, water, or other natural
5104 resources before July 1, 2020, the fiduciary may allocate receipts from the interest as provided
5105 in this section or in the manner used by the fiduciary before July 1, 2020.

5106 (b) If the fiduciary acquires an interest in minerals, water, or other natural resources on
5107 or after July 1, 2020, the fiduciary shall allocate receipts from the interest as provided in this
5108 section.

5109 Section 154. Section **75A-5-412**, which is renumbered from Section 22-3-412 is
5110 renumbered and amended to read:

5111 ~~[22-3-412]~~. **75A-5-412. Receipts normally apportioned -- Timber.**

5112 (1) To the extent that a fiduciary does not account for receipts from the sale of timber
5113 and related products as a business under Section [~~22-3-403~~] 75A-5-403, the fiduciary shall
5114 allocate the net receipts:

5115 (a) to income, to the extent that the amount of timber cut from the land does not exceed
5116 the rate of growth of the timber;

5117 (b) to principal, to the extent that the amount of timber cut from the land exceeds the
5118 rate of growth of the timber or the net receipts are from the sale of standing timber;

5119 (c) between income and principal if the net receipts are from the lease of land used for
5120 growing and cutting timber or from a contract to cut timber from land, by determining the
5121 amount of timber cut from the land under the lease or contract and applying the rules in
5122 Subsections (1)(a) and (b); or

5123 (d) to principal, to the extent that advance payments, bonuses, and other payments are
5124 not allocated under Subsection (1)(a), (b), or (c).

5125 (2) In determining net receipts to be allocated under Subsection (1), a fiduciary shall
5126 deduct and transfer to principal a reasonable amount for depletion.

5127 (3) This section applies to land owned or held by a fiduciary regardless of whether a
5128 settlor was cutting timber from the land before the fiduciary owned or held the property.

5129 (4) (a) If a fiduciary owns or holds an interest in land used for growing and cutting
5130 timber before July 1, 2020, the fiduciary may allocate net receipts from the sale of timber and
5131 related products as provided in this section or in the manner used by the fiduciary before July 1,
5132 2020.

5133 (b) If the fiduciary acquires an interest in land used for growing and cutting timber on
5134 or after July 1, 2020, the fiduciary shall allocate net receipts from the sale of timber and related
5135 products as provided in this section.

5136 Section 155. Section **75A-5-413**, which is renumbered from Section 22-3-413 is
5137 renumbered and amended to read:

5138 ~~[22-3-413]~~. **75A-5-413. Receipts normally apportioned -- Marital deduction**
5139 **property not productive of income.**

5140 (1) If a trust received property for which a gift or estate tax marital deduction was
5141 allowed and the settlor's spouse holds a mandatory income interest in the trust, the spouse may
5142 require the trustee, to the extent the trust assets otherwise do not provide the spouse with

5143 sufficient income from or use of the trust assets to qualify for the deduction, to:

5144 (a) make property productive of income;

5145 (b) convert property to property productive of income within a reasonable time; or

5146 (c) exercise the power to adjust under Section ~~[22-3-203]~~ [75A-5-203](#).

5147 (2) The trustee may decide which action or combination of actions in Subsection (1) to
5148 take.

5149 Section 156. Section ~~75A-5-414~~, which is renumbered from Section 22-3-414 is
5150 renumbered and amended to read:

5151 ~~[22-3-414]~~. **75A-5-414. Receipts normally apportioned -- Derivative or option.**

5152 (1) ~~[It]~~ As used in this section:

5153 (a) "Derivative" means a contract, instrument, other arrangement, or combination of
5154 contracts, instruments, or other arrangements, for which the value, rights, and obligations are,
5155 in whole or in part, dependent on or derived from an underlying tangible or intangible asset,
5156 group of tangible or intangible assets, index, or occurrence of an event.

5157 (b) "Derivative" includes stocks, fixed income securities, and financial instruments and
5158 arrangements based on indices, commodities, interest rates, weather-related events, and
5159 credit-default events.

5160 (2) To the extent that a fiduciary does not account for a transaction in derivatives as a
5161 business under Section ~~[22-3-403]~~ [75A-5-403](#), the fiduciary shall allocate:

5162 (a) 10% of receipts from the transaction and 10% of disbursements made in connection
5163 with the transaction to income; and

5164 (b) the balance to principal.

5165 (3) Subsection (4) applies if:

5166 (a) a fiduciary:

5167 (i) grants an option to buy property from a trust, regardless of whether the trust owns
5168 the property when the option is granted;

5169 (ii) grants an option that permits another person to sell property to the trust; or

5170 (iii) acquires an option to buy property for the trust or an option to sell an asset owned
5171 by the trust; and

5172 (b) the fiduciary or other owner of the asset is required to deliver the asset if the option
5173 is exercised.

5174 (4) If this subsection applies, the fiduciary shall allocate 10% to income and the
5175 balance to principal of the following amounts:

- 5176 (a) an amount received for granting the option;
- 5177 (b) an amount paid to acquire the option; and
- 5178 (c) gain or loss realized on the exercise, exchange, settlement, offset, closing, or
5179 expiration of the option.

5180 Section 157. Section **75A-5-415**, which is renumbered from Section 22-3-415 is
5181 renumbered and amended to read:

5182 ~~[22-3-415]~~. **75A-5-415. Receipts normally apportioned -- Asset-backed security.**

5183 (1) Except as otherwise provided in Subsection (2), a fiduciary shall allocate:

5184 (a) to income, a receipt from or related to an asset-backed security, to the extent that
5185 the payor identifies the payment as being from interest or other current return; and

5186 (b) to principal, the balance of the receipt.

5187 (2) If a fiduciary receives one or more payments in exchange for part or all of the
5188 fiduciary's interest in an asset-backed security, including a liquidation or redemption of the
5189 fiduciary's interest in the security, the fiduciary shall allocate:

5190 (a) to income, 10% of receipts from the transaction and 10% of disbursements made in
5191 connection with the transaction; and

5192 (b) to principal, the balance of the receipts and disbursements.

5193 Section 158. Section **75A-5-416**, which is renumbered from Section 22-3-416 is
5194 renumbered and amended to read:

5195 ~~[22-3-416]~~. **75A-5-416. Receipts normally apportioned -- Other financial
5196 instrument or arrangement.**

5197 (1) A fiduciary shall allocate receipts from or related to a financial instrument or
5198 arrangement not otherwise addressed by this chapter.

5199 (2) The allocation must be consistent with Sections ~~[22-3-414 and 22-3-415]~~
5200 [75A-5-414](#) and [75A-5-415](#).

5201 Section 159. Section **75A-5-501**, which is renumbered from Section 22-3-501 is
5202 renumbered and amended to read:

5203 **Part 5. Allocation of Disbursements**

5204 ~~[22-3-501]~~. **75A-5-501. Disbursement from income.**

5205 Subject to Section [~~22-3-504~~] [75A-5-504](#), and except as otherwise provided in
5206 Subsection [~~22-3-601(3)(b)~~] [75A-5-601\(3\)\(b\)](#) or (c), a fiduciary shall disburse from income:

5207 (1) one-half of:

5208 (a) the regular compensation of the fiduciary and any person providing investment
5209 advisory, custodial, or other services to the fiduciary, to the extent income is sufficient; and

5210 (b) an expense for an accounting, judicial or nonjudicial proceeding, or other matter
5211 that involves both income and successive interests, to the extent income is sufficient;

5212 (2) the balance of the disbursements described in Subsection (1), to the extent a
5213 fiduciary that is an independent person determines that making those disbursements from
5214 income would be in the interests of the beneficiaries;

5215 (3) another ordinary expense incurred in connection with administration, management,
5216 or preservation of property and distribution of income, including interest, an ordinary repair,
5217 regularly recurring tax assessed against principal, and an expense of an accounting, judicial or
5218 nonjudicial proceeding, or other matter that involves primarily an income interest, to the extent
5219 income is sufficient; and

5220 (4) a premium on insurance covering loss of a principal asset or income from or use of
5221 the asset.

5222 Section 160. Section **75A-5-502**, which is renumbered from Section 22-3-502 is
5223 renumbered and amended to read:

5224 [~~22-3-502~~]. **75A-5-502. Disbursement from principal.**

5225 (1) Subject to Section [~~22-3-505~~] [75A-5-505](#), and except as otherwise provided in
5226 Subsection [~~22-3-601(3)(b)~~] [75A-5-601\(3\)\(b\)](#) or (c), a fiduciary shall disburse from principal:

5227 (a) the balance of the disbursements described in Subsections [~~22-3-501(1)~~]
5228 [75A-5-501\(1\)](#) and (3), after application of Subsection [~~22-3-501(2)~~] [75A-5-501\(2\)](#);

5229 (b) the fiduciary's compensation calculated on principal as a fee for acceptance,
5230 distribution, or termination;

5231 (c) a payment of an expense to prepare for or execute a sale or other disposition of
5232 property;

5233 (d) a payment on the principal of a trust debt;

5234 (e) a payment of an expense of an accounting, judicial or nonjudicial proceeding, or
5235 other matter that involves primarily principal, including a proceeding to construe the terms of

5236 the trust or protect property;

5237 (f) a payment of a premium for insurance, including title insurance, not described in
5238 Subsection [~~22-3-501(4)~~] 75A-5-501(4), of which the fiduciary is the owner and beneficiary;

5239 (g) a payment of an estate or inheritance tax or other tax imposed because of the death
5240 of a decedent, including penalties, apportioned to the trust; and

5241 (h) a payment:

5242 (i) related to environmental matters, including:

5243 (A) reclamation;

5244 (B) assessing environmental conditions;

5245 (C) remedying and removing environmental contamination;

5246 (D) monitoring remedial activities and the release of substances;

5247 (E) preventing future releases of substances;

5248 (F) collecting amounts from persons liable or potentially liable for the costs of
5249 activities described in Subsections (1)(h)(i)(A) through (E);

5250 (G) penalties imposed under environmental laws or regulations;

5251 (H) other actions to comply with environmental laws or regulations;

5252 (I) statutory or common law claims by third parties; and

5253 (J) defending claims based on environmental matters; and

5254 (ii) for a premium for insurance for matters described in Subsection (1)(h)(i).

5255 (2) If a principal asset is encumbered with an obligation that requires income from the
5256 asset to be paid directly to a creditor, the fiduciary shall transfer from principal to income an
5257 amount equal to the income paid to the creditor in reduction of the principal balance of the
5258 obligation.

5259 Section 161. Section ~~75A-5-503~~, which is renumbered from Section 22-3-503 is
5260 renumbered and amended to read:

5261 [~~22-3-503~~]. 75A-5-503. Transfer from income to principal for depreciation.

5262 (1) [~~It~~] As used in this section, "depreciation" means a reduction in value due to wear,
5263 tear, decay, corrosion, or gradual obsolescence of a tangible asset having a useful life of more
5264 than one year.

5265 (2) A fiduciary may transfer to principal a reasonable amount of the net cash receipts
5266 from a principal asset that is subject to depreciation, but may not transfer any amount for

5267 depreciation:

5268 (a) of the part of real property used or available for use by a beneficiary as a residence;

5269 (b) of tangible personal property held or made available for the personal use or

5270 enjoyment of a beneficiary; or

5271 (c) under this section, to the extent the fiduciary accounts:

5272 (i) under Section [~~22-3-410~~] [75A-5-410](#) for the asset; or

5273 (ii) under Section [~~22-3-403~~] [75A-5-403](#) for the business or other activity in which the
5274 asset is used.

5275 (3) An amount transferred to principal under this section need not be separately held.

5276 Section 162. Section **75A-5-504**, which is renumbered from Section 22-3-504 is

5277 renumbered and amended to read:

5278 ~~[22-3-504]~~. **75A-5-504. Reimbursement of income from principal.**

5279 (1) If a fiduciary makes or expects to make an income disbursement described in
5280 Subsection (2), the fiduciary may transfer an appropriate amount from principal to income in
5281 one or more accounting periods to reimburse income.

5282 (2) To the extent the fiduciary has not been and does not expect to be reimbursed by a
5283 third party, income disbursements to which Subsection (1) applies include:

5284 (a) an amount chargeable to principal but paid from income because principal is
5285 illiquid;

5286 (b) a disbursement made to prepare property for sale, including improvements and
5287 commissions; and

5288 (c) a disbursement described in Subsection [~~22-3-502(1)~~] [75A-5-502\(1\)](#).

5289 (3) If an asset whose ownership gives rise to an income disbursement becomes subject
5290 to a successive interest after an income interest ends, the fiduciary may continue to make
5291 transfers under Subsection (1).

5292 Section 163. Section **75A-5-505**, which is renumbered from Section 22-3-505 is
5293 renumbered and amended to read:

5294 ~~[22-3-505]~~. **75A-5-505. Reimbursement of principal from income.**

5295 (1) If a fiduciary makes or expects to make a principal disbursement described in
5296 Subsection (2), the fiduciary may transfer an appropriate amount from income to principal in
5297 one or more accounting periods to reimburse principal or provide a reserve for future principal

5298 disbursements.

5299 (2) To the extent that a fiduciary has not been and does not expect to be reimbursed by
5300 a third party, principal disbursements to which Subsection (1) applies include:

5301 (a) an amount chargeable to income but paid from principal because income is not
5302 sufficient;

5303 (b) the cost of an improvement to principal, regardless of whether the improvement is a
5304 change to an existing asset or the construction of a new asset, including a special assessment;

5305 (c) a disbursement made to prepare property for rental, including tenant allowances,
5306 leasehold improvements, and commissions;

5307 (d) a periodic payment on an obligation secured by a principal asset, to the extent that
5308 the amount transferred from income to principal for depreciation is less than the periodic
5309 payment; and

5310 (e) a disbursement described in Subsection [~~22-3-502(1)~~] [75A-5-502\(1\)](#).

5311 (3) If an asset whose ownership gives rise to a principal disbursement becomes subject
5312 to a successive interest after an income interest ends, the fiduciary may continue to make
5313 transfers under Subsection (1).

5314 Section 164. Section ~~75A-5-506~~, which is renumbered from Section 22-3-506 is
5315 renumbered and amended to read:

5316 [~~22-3-506~~]. **75A-5-506. Income taxes.**

5317 (1) A tax required to be paid by a fiduciary that is based on receipts allocated to income
5318 shall be paid from income.

5319 (2) A tax required to be paid by a fiduciary that is based on receipts allocated to
5320 principal shall be paid from principal, even if the tax is called an income tax by the taxing
5321 authority.

5322 (3) Subject to Subsection (4) and Sections [~~22-3-504, 22-3-505, and 22-3-507~~]
5323 [75A-5-504](#), [75A-5-505](#), and [75A-5-507](#), a tax required to be paid by a fiduciary on a share of
5324 an entity's taxable income in an accounting period shall be paid from:

5325 (a) income and principal proportionately to the allocation between income and
5326 principal of receipts from the entity in the period; and

5327 (b) principal, to the extent that the tax exceeds the receipts from the entity in the
5328 accounting period.

5329 (4) After applying Subsections (1) through (3), a fiduciary shall adjust income or
5330 principal receipts, to the extent that the taxes the fiduciary pays are reduced because of a
5331 deduction for a payment made to a beneficiary.

5332 Section 165. Section ~~75A-5-507~~, which is renumbered from Section 22-3-507 is
5333 renumbered and amended to read:

5334 ~~[22-3-507]~~. 75A-5-507. **Adjustment between income and principal because of**
5335 **taxes.**

5336 (1) A fiduciary may make an adjustment between income and principal to offset the
5337 shifting of economic interests or tax benefits between current income beneficiaries and
5338 successor beneficiaries that arises from:

5339 (a) an election or decision the fiduciary makes regarding a tax matter, other than a
5340 decision to claim an income tax deduction to which Subsection (2) applies;

5341 (b) an income tax or other tax imposed on the fiduciary or a beneficiary as a result of a
5342 transaction involving the fiduciary or a distribution by the fiduciary; or

5343 (c) ownership by the fiduciary of an interest in an entity, a part of whose taxable
5344 income, regardless of whether the taxable income is distributed, is includable in the taxable
5345 income of the fiduciary or a beneficiary.

5346 (2) (a) If the amount of an estate tax marital or charitable deduction is reduced because
5347 a fiduciary deducts an amount paid from principal for income tax purposes instead of deducting
5348 the amount for estate tax purposes and, as a result, estate taxes paid from principal are
5349 increased and income taxes paid by the fiduciary or a beneficiary are decreased, the fiduciary
5350 shall charge each beneficiary that benefits from the decrease in income tax to reimburse the
5351 principal from which the increase in estate tax is paid.

5352 (b) The total reimbursement must equal the increase in the estate tax, to the extent that
5353 the principal used to pay the increase would have qualified for a marital or charitable deduction
5354 but for the payment.

5355 (c) The share of the reimbursement for each fiduciary or beneficiary whose income
5356 taxes are reduced shall be the same as the fiduciary's or beneficiary's share of the total decrease
5357 in income tax.

5358 (3) A fiduciary that charges a beneficiary under Subsection (2) may offset the charge
5359 by obtaining payment from the beneficiary, withholding an amount from future distributions to

5360 the beneficiary, or adopting another method or combination of methods.

5361 Section 166. Section **75A-5-601**, which is renumbered from Section 22-3-601 is
5362 renumbered and amended to read:

5363 **Part 6. Death of Individual or Termination of Income Interest**

5364 **~~[22-3-601]~~. 75A-5-601. Determination and distribution of net income.**

5365 (1) This section applies when:

5366 (a) the death of an individual results in the creation of an estate or trust; or

5367 (b) an income interest in a trust terminates, regardless of whether the trust continues or
5368 is distributed.

5369 (2) A fiduciary of an estate or trust with an income interest that terminates shall:

5370 (a) determine, in accordance with Subsection (8) and Part 4, Allocation of Receipts,
5371 Part 5, Allocation of Disbursements, and Part 7, Apportionment at Beginning and End of
5372 Income Interest, the amount of net income and net principal receipts received from property
5373 specifically given to a beneficiary; and

5374 (b) distribute the net income and net principal receipts to the beneficiary that is to
5375 receive the specific property.

5376 (3) Subject to Subsection (4), a fiduciary shall determine the income and net income of
5377 an estate or income interest in a trust that terminates, other than the amount of net income
5378 determined in accordance with Subsection (2), and in accordance with Part 4, Allocation of
5379 Receipts, Part 5, Allocation of Disbursements, and Part 7, Apportionment at Beginning and
5380 End of Income Interest, and by:

5381 (a) including in net income all income from property used or sold to discharge
5382 liabilities;

5383 (b) paying from income or principal, in the fiduciary's discretion:

5384 (i) fees of attorneys, accountants, and fiduciaries;

5385 (ii) court costs and other expenses of administration;

5386 (iii) interest on estate taxes, inheritance taxes, and other taxes imposed because of the
5387 decedent's death; and

5388 (c) paying from principal other disbursements made or incurred in connection with the
5389 settlement of the estate or the winding up of an income interest that terminates, including:

5390 (i) to the extent authorized by the decedent's will, the terms of the trust, or applicable

5391 law, debts, funeral expenses, disposition of remains, family allowances, estate and inheritance
5392 taxes, and other taxes imposed because of the decedent's death; and

5393 (ii) related penalties that are apportioned, by the decedent's will, the terms of the trust,
5394 or applicable law, to the estate or income interest that terminates.

5395 (4) A fiduciary may pay the expenses from income of property passing to a trust for
5396 which the fiduciary claims a federal estate tax marital or charitable deduction only to the
5397 extent:

5398 (a) the payment of the expenses from income will not cause the reduction or loss of the
5399 deduction; or

5400 (b) the fiduciary makes an adjustment under Subsection [~~22-3-507(2)~~] [75A-5-507\(2\)](#).

5401 (5) If a decedent's will, the terms of a trust, or applicable law provides for the payment
5402 of interest or the equivalent of interest to a beneficiary that receives a pecuniary amount
5403 outright, the fiduciary shall make the payment from net income determined under Subsection
5404 (3) or from principal to the extent that net income is insufficient.

5405 (6) If a beneficiary is to receive a pecuniary amount outright from a trust after an
5406 income interest ends because of an income beneficiary's death, and no payment of interest or
5407 the equivalent of interest is provided for by the terms of the trust or applicable law, the
5408 fiduciary shall pay the interest or the equivalent of interest to which the beneficiary would be
5409 entitled under applicable law if the pecuniary amount were required to be paid under a will.

5410 (7) A fiduciary shall distribute net income remaining after payments required by
5411 Subsections (5) and (6) in the manner described in Section [~~22-3-602~~] [75A-5-602](#) to all other
5412 beneficiaries, including a beneficiary that receives a pecuniary amount in trust, even if the
5413 beneficiary holds an unqualified power to withdraw assets from the trust or other presently
5414 exercisable general power of appointment over the trust.

5415 (8) (a) A fiduciary may not reduce principal or income receipts from property described
5416 in Subsection (2) because of a payment described in Section [~~22-3-501 or 22-3-502~~] [75A-5-501](#)
5417 [or 75A-5-502](#), to the extent the decedent's will, the terms of the trust, or applicable law requires
5418 the fiduciary to make the payment from assets other than the property or to the extent the
5419 fiduciary recovers or expects to recover the payment from a third party.

5420 (b) The net income and principal receipts from the property shall be determined by
5421 including the amount the fiduciary receives or pays regarding the property, whether the amount

5422 accrued or became due before, on, or after the date of the decedent's death or an income
5423 interest's terminating event, and making a reasonable provision for an amount the estate or
5424 income interest may become obligated to pay after the property is distributed.

5425 Section 167. Section **75A-5-602**, which is renumbered from Section 22-3-602 is
5426 renumbered and amended to read:

5427 ~~[22-3-602]~~. **75A-5-602. Distribution to successor beneficiary.**

5428 (1) (a) Except to the extent Part 3, Unitrust, applies for a beneficiary that is a trust, each
5429 beneficiary described in Subsection ~~[22-3-601(6)]~~ 75A-5-601(6) is entitled to receive a share of
5430 the net income equal to the beneficiary's fractional interest in undistributed principal assets,
5431 using values of the undistributed principal assets as of the distribution date.

5432 (b) If a fiduciary makes more than one distribution of assets to beneficiaries to which
5433 this section applies, each beneficiary, including a beneficiary that does not receive part of the
5434 distribution, is entitled, as of each distribution date, to a share of the net income the fiduciary
5435 received after the decedent's death, an income interest's other terminating event, or the
5436 preceding distribution by the fiduciary.

5437 (2) In determining a beneficiary's share of net income under Subsection (1):

5438 (a) the beneficiary is entitled to receive a share of the net income equal to the
5439 beneficiary's fractional interest in the undistributed principal assets immediately before the
5440 distribution date;

5441 (b) the beneficiary's fractional interest under Subsection (2)(a) shall be calculated:

5442 (i) on the aggregate value of the assets as of the distribution date without reducing the
5443 value by any unpaid principal obligation; and

5444 (ii) without regard to:

5445 (A) property specifically given to a beneficiary under the decedent's will or the terms of
5446 the trust; and

5447 (B) property required to pay pecuniary amounts not in trust; and

5448 (c) the distribution date under Subsection (2)(a) may be the date on which the fiduciary
5449 calculates the value of the assets if that date is reasonably near the date on which the assets are
5450 distributed.

5451 (3) To the extent that a fiduciary does not distribute under this section all the collected
5452 but undistributed net income to each beneficiary on or before a distribution date, the fiduciary

5453 shall maintain records showing the interest of each beneficiary in the net income.

5454 (4) If this section applies to income from an asset, a fiduciary may apply Subsection (2)
5455 to net gain or loss realized from the disposition of the asset after the decedent's death, an
5456 income interest's terminating event, or the preceding distribution by the fiduciary.

5457 Section 168. Section **75A-5-701**, which is renumbered from Section 22-3-701 is
5458 renumbered and amended to read:

5459 **Part 7. Apportionment at Beginning and End of Income Interest**

5460 **[~~22-3-701~~]. 75A-5-701. When right to income begins and ends.**

5461 (1) (a) An income beneficiary is entitled to net income in accordance with the terms of
5462 the trust from the date on which an income interest begins.

5463 (b) The income interest begins on the date that is specified in the terms of the trust or,
5464 if no date is specified, on the date an asset becomes subject to:

5465 (i) the trust for the current income beneficiary; or

5466 (ii) a successive interest for a successor beneficiary.

5467 (2) An asset becomes subject to a trust under Subsection (1)(b)(i):

5468 (a) for an asset that is transferred to the trust during the settlor's life, on the date the
5469 asset is transferred;

5470 (b) for an asset that becomes subject to the trust because of a decedent's death, on the
5471 date of the decedent's death, even if there is an intervening period of administration of the
5472 decedent's estate; or

5473 (c) for an asset that is transferred to a fiduciary by a third party because of a decedent's
5474 death, on the date of the decedent's death.

5475 (3) An asset becomes subject to a successive interest under Subsection (1)(b)(ii) on the
5476 day after the preceding income interest ends, as determined under Subsection (4), even if there
5477 is an intervening period of administration to wind up the preceding income interest.

5478 (4) An income interest ends on the day before an income beneficiary dies or another
5479 terminating event occurs or on the last day of a period during which there is no beneficiary to
5480 which a fiduciary is permitted or required to distribute income.

5481 Section 169. Section **75A-5-702**, which is renumbered from Section 22-3-702 is
5482 renumbered and amended to read:

5483 **[~~22-3-702~~]. 75A-5-702. Apportionment of receipts and disbursements when**

5484 **decedent dies or income interest begins.**

5485 (1) A fiduciary shall allocate an income receipt or disbursement, other than a receipt to
5486 which Subsection [~~22-3-601~~(2)] 75A-5-601(2) applies, to principal if the due date of the
5487 income receipt or disbursement occurs before the date on which:

5488 (a) for an estate, the decedent died; or

5489 (b) for a trust or successive interest, an income interest begins.

5490 (2) If the due date of a periodic income receipt or disbursement occurs on or after the
5491 date on which a decedent died or an income interest begins, a fiduciary shall allocate the
5492 receipt or disbursement to income.

5493 (3) If an income receipt or disbursement is not periodic or has no due date, a fiduciary
5494 shall:

5495 (a) treat the receipt or disbursement under this section as accruing from day to day; and

5496 (b) allocate:

5497 (i) to principal, the portion of the receipt or disbursement accruing before the date on
5498 which a decedent died or an income interest begins; and

5499 (ii) to income, the balance.

5500 (4) A receipt or disbursement is periodic under Subsections (2) and (3) if:

5501 (a) the receipt or disbursement shall be paid at regular intervals under an obligation to
5502 make payments; or

5503 (b) the payor customarily makes payments at regular intervals.

5504 (5) (a) An item of income or obligation is due under this section on the date on which
5505 the payor is required to make a payment.

5506 (b) If a payment date is not stated, there is no due date.

5507 (6) Distributions to shareholders or other owners from an entity to which Section
5508 [~~22-3-401~~] 75A-5-401 applies are due:

5509 (a) on the date fixed by or on behalf of the entity for determining the persons entitled to
5510 receive the distribution;

5511 (b) if no date is fixed, on the date of the decision by or on behalf of the entity to make
5512 the distribution; or

5513 (c) if no date is fixed and the fiduciary does not know the date of the decision by or on
5514 behalf of the entity to make the distribution, on the date the fiduciary learns of the decision.

5515 Section 170. Section **75A-5-703**, which is renumbered from Section 22-3-703 is
5516 renumbered and amended to read:

5517 ~~[22-3-703]~~. **75A-5-703. Apportionment when income interest ends.**

5518 (1) ~~[It]~~ As used in this section:

5519 (a) "Undistributed income" means net income received on or before the date on which
5520 an income interest ends.

5521 (b) "Undistributed income" does not include an item of income or expense that is due
5522 or accrued or net income that has been added or is required to be added, to principal under the
5523 terms of the trust.

5524 (2) Except as otherwise provided in Subsection (3), when a mandatory income interest
5525 of a beneficiary ends, the fiduciary shall pay the beneficiary's share of the undistributed income
5526 that is not disposed of under the terms of the trust to the beneficiary or, if the beneficiary does
5527 not survive the date that the interest ends, to the beneficiary's estate.

5528 (3) If a beneficiary has an unqualified power to withdraw more than 5% of the value of
5529 a trust immediately before an income interest ends:

5530 (a) the fiduciary shall allocate to principal the undistributed income from the portion of
5531 the trust that may be withdrawn; and

5532 (b) Subsection (2) applies only to the balance of the undistributed income.

5533 (4) When a fiduciary's obligation to pay a fixed annuity or a fixed fraction of the value
5534 of assets ends, the fiduciary shall prorate the final payment as required to preserve an income
5535 tax, gift tax, estate tax, or other tax benefit.

5536 Section 171. Section **75A-5-801**, which is renumbered from Section 22-3-801 is
5537 renumbered and amended to read:

5538 **Part 8. Applicability Provisions**

5539 ~~[22-3-801]~~. **75A-5-801. Uniformity of application and construction.**

5540 In applying and construing this uniform act, consideration must be given to the need to
5541 promote uniformity of the law with respect to the uniform act's subject matter among states that
5542 enact ~~[it]~~ this uniform law.

5543 Section 172. Section **75A-5-802**, which is renumbered from Section 22-3-802 is
5544 renumbered and amended to read:

5545 ~~[22-3-802]~~. **75A-5-802. Relation to Electronic Signatures in Global and**

5546 **National Commerce Act.**

5547 This chapter modifies, limits, or supersedes the Electronic Signatures in Global and
5548 National Commerce Act, 15 U.S.C. Sec. 7001 et seq., but does not modify, limit, or supersede
5549 Section 101(c) of that act, 15 U.S.C. Sec. 7001(c), or authorize electronic delivery of any of the
5550 notices described in Section 103(b) of that act, 15 U.S.C. Sec. 7003(b).

5551 Section 173. Section **75A-5-803**, which is renumbered from Section 22-3-803 is
5552 renumbered and amended to read:

5553 **~~[22-3-803]~~. 75A-5-803. Application to trust or estate.**

5554 This chapter applies to a trust or estate existing or created on or after July 1, 2020,
5555 except as otherwise expressly provided in the terms of the trust or this chapter.

5556 Section 174. Section **75A-5-804**, which is renumbered from Section 22-3-804 is
5557 renumbered and amended to read:

5558 **~~[22-3-804]~~. 75A-5-804. Severability.**

5559 If any provision of this chapter or the application of this chapter to any person or
5560 circumstance is held invalid, the invalidity does not affect other provisions or applications of
5561 this chapter that can be given effect without the invalid provision or application, and to this end
5562 the provisions of this chapter are severable.

5563 Section 175. Section **75A-6-101**, which is renumbered from Section 75-11-102 is
5564 renumbered and amended to read:

5565 **CHAPTER 6. UNIFORM FIDUCIARY ACCESS TO DIGITAL ASSETS ACT**

5566 **~~[75-11-102]~~. 75A-6-101. Definitions.**

5567 As used in this chapter:

5568 (1) "Account" means an arrangement under a terms of service agreement in which a
5569 custodian carries, maintains, processes, receives, or stores a digital asset of the user or provides
5570 goods or services to the user.

5571 (2) "Agent" means an attorney in fact granted authority under a durable or nondurable
5572 power of attorney.

5573 (3) "Carries" means engages in the transmission of an electronic communication.

5574 (4) "Catalogue of electronic communications" means information that identifies each
5575 person with which a user has had an electronic communication, the time and date of the
5576 communication, and the electronic address of the person.

5577 (5) (a) "Conservator" means a person appointed by a court to manage the estate of a
5578 living individual.

5579 (b) "Conservator" includes a limited conservator.

5580 (6) "Content of an electronic communication" means information concerning the
5581 substance or meaning of the communication that:

5582 (a) has been sent or received by a user;

5583 (b) is in electronic storage by a custodian providing an electronic communication
5584 service to the public or is carried or maintained by a custodian providing a remote computing
5585 service to the public; and

5586 (c) is not readily accessible to the public.

5587 (7) "Court" means the district court.

5588 (8) "Custodian" means a person that carries, maintains, processes, receives, or stores a
5589 digital asset of a user.

5590 (9) "Designated recipient" means a person chosen by a user using an online tool to
5591 administer digital assets of the user.

5592 (10) (a) "Digital asset" means an electronic record in which an individual has a right or
5593 interest.

5594 (b) "Digital asset" does not include an underlying asset or liability unless the asset or
5595 liability is itself an electronic record.

5596 (11) "Electronic" means relating to technology having electrical, digital, magnetic,
5597 wireless, optical, electromagnetic, or similar capabilities.

5598 (12) "Electronic communication" has the same meaning as the definition in 18 U.S.C.
5599 Sec. 2510(12).

5600 (13) "Electronic communication service" means a custodian that provides to a user the
5601 ability to send or receive an electronic communication.

5602 (14) "Estate" means the same as that term is defined in Section [75-1-201](#).

5603 [~~(14)~~] (15) "Fiduciary" means an original, additional, or successor personal
5604 representative, conservator, guardian, agent, or trustee.

5605 [~~(15)~~] (16) (a) "Guardian" means a person appointed by a court to manage the affairs of
5606 a living individual.

5607 (b) "Guardian" includes a limited guardian.

5608 ~~[(16)]~~ (17) "Information" means data, text, images, videos, sounds, codes, computer
5609 programs, software, databases, or the like.

5610 ~~[(17)]~~ (18) "Online tool" means an electronic service provided by a custodian that
5611 allows the user, in an agreement distinct from the terms of service agreement between the
5612 custodian and user, to provide directions for disclosure or nondisclosure of digital assets to a
5613 third person.

5614 ~~[(18)]~~ (19) "Person" means an individual, estate, business or nonprofit entity, public
5615 corporation, government or governmental subdivision, agency, instrumentality, or other legal
5616 entity.

5617 ~~[(19)]~~ (20) "Personal representative" means an executor, administrator, special
5618 administrator as defined in Section [75-1-201](#), or person that performs substantially the same
5619 function under the law of this state other than this chapter.

5620 ~~[(20)]~~ (21) "Power of attorney" means a record that grants an agent authority to act in
5621 the place of a principal.

5622 ~~[(21)]~~ (22) "Principal" means an individual who grants authority to an agent in a power
5623 of attorney.

5624 ~~[(22)]~~ (23) (a) "Protected person" means an individual for whom a conservator or
5625 guardian has been appointed.

5626 (b) "Protected person" includes an individual for whom an application for the
5627 appointment of a conservator or guardian is pending.

5628 ~~[(23)]~~ (24) "Record" means information that is inscribed on a tangible medium or that
5629 is stored in an electronic or other medium and is retrievable in perceivable form.

5630 ~~[(24)]~~ (25) "Remote computing service" means a custodian that provides to a user
5631 computer processing services or the storage of digital assets by means of an electronic
5632 communications system, as defined in 18 U.S.C. Sec. 2510(14).

5633 (26) "Successor personal representative" means the same as that term is defined in
5634 [Section 75-1-201](#).

5635 ~~[(25)]~~ (27) "Terms of service agreement" means an agreement that controls the
5636 relationship between a user and a custodian.

5637 (28) "Trust" means the same as that term is defined in [Section 75-1-201](#).

5638 ~~[(26)]~~ (29) (a) "Trustee" means a fiduciary with legal title to property pursuant to an

5639 agreement or declaration that creates a beneficial interest in another.

5640 (b) "Trustee" includes a successor trustee.

5641 ~~[(27)]~~ (30) "User" means a person that has an account with a custodian.

5642 ~~[(28)]~~ (31) "Will" includes a codicil, a testamentary instrument that only appoints an
5643 executor, and an instrument that revokes or revises a testamentary instrument.

5644 Section 176. Section **75A-6-102**, which is renumbered from Section 75-11-103 is
5645 renumbered and amended to read:

5646 ~~[75-11-103]~~. **75A-6-102. Applicability.**

5647 (1) This chapter applies to:

5648 (a) a fiduciary or agent acting under a will or power of attorney executed before, on, or
5649 after May 9, 2017;

5650 (b) a personal representative acting for a decedent who died before, on, or after May 9,
5651 2017;

5652 (c) a conservatorship or guardianship proceeding commenced before, on, or after May
5653 9, 2017; and

5654 (d) a trustee acting under a trust created before, on, or after May 9, 2017.

5655 (2) This chapter applies to a custodian if the user resides in this state or resided in this
5656 state at the time of the user's death.

5657 (3) This chapter does not apply to a digital asset of an employer used by an employee
5658 in the ordinary course of the employer's business.

5659 Section 177. Section **75A-6-103**, which is renumbered from Section 75-11-104 is
5660 renumbered and amended to read:

5661 ~~[75-11-104]~~. **75A-6-103. User direction for disclosure of digital assets.**

5662 (1) A user may use an online tool to direct the custodian to disclose or not to disclose
5663 to a designated recipient some or all of the user's digital assets, including the content of
5664 electronic communications. If the online tool allows the user to modify or delete a direction at
5665 all times, a direction regarding disclosure using an online tool overrides a contrary direction by
5666 the user in a will, trust, power of attorney, or other record.

5667 (2) If a user has not used an online tool to give direction under Subsection (1) or if the
5668 custodian has not provided an online tool, the user may allow or prohibit in a will, trust, power
5669 of attorney, or other record disclosure to a fiduciary of some or all of the user's digital assets,

5670 including the content of electronic communications sent or received by the user.

5671 (3) A user's direction under Subsection (1) or (2) overrides a contrary provision in a
5672 terms of service agreement that does not require the user to act affirmatively and distinctly
5673 from the user's assent to the terms of service.

5674 Section 178. Section **75A-6-104**, which is renumbered from Section 75-11-105 is
5675 renumbered and amended to read:

5676 ~~[75-11-105]~~. **75A-6-104. Terms of service agreement.**

5677 (1) This chapter does not change or impair a right of a custodian or a user under a
5678 terms of service agreement to access and use digital assets of the user.

5679 (2) This chapter does not give a fiduciary or designated recipient any new or expanded
5680 rights other than those held by the user for whom, or for whose estate, the fiduciary or
5681 designated recipient acts or represents.

5682 (3) A fiduciary's or designated recipient's access to digital assets may be modified or
5683 eliminated by a user, by federal law, or by a terms of service agreement if the user has not
5684 provided direction under Section ~~[75-11-104]~~ 75A-6-103.

5685 Section 179. Section **75A-6-105**, which is renumbered from Section 75-11-106 is
5686 renumbered and amended to read:

5687 ~~[75-11-106]~~. **75A-6-105. Procedure for disclosing digital assets.**

5688 (1) When disclosing digital assets of a user under this chapter, the custodian may at the
5689 custodian's sole discretion:

5690 (a) grant a fiduciary or designated recipient full access to the user's account;

5691 (b) grant a fiduciary or designated recipient partial access to the user's account
5692 sufficient to perform the tasks with which the fiduciary or designated recipient is charged; or

5693 (c) provide a fiduciary or designated recipient a copy in a record of any digital asset
5694 that, on the date the custodian received the request for disclosure, the user could have accessed
5695 if the user were alive and had full capacity and access to the account.

5696 (2) A custodian may assess a reasonable administrative charge for the cost of
5697 disclosing digital assets under this chapter.

5698 (3) A custodian need not disclose under this chapter a digital asset deleted by a user.

5699 (4) If a user directs or a fiduciary requests a custodian to disclose under this chapter
5700 some, but not all, of the user's digital assets, the custodian need not disclose the assets if

5701 segregation of the assets would impose an undue burden on the custodian. If the custodian
5702 believes the direction or request imposes an undue burden, the custodian or fiduciary may seek
5703 an order from the court to disclose:

- 5704 (a) a subset limited by date of the user's digital assets;
5705 (b) all of the user's digital assets to the fiduciary or designated recipient;
5706 (c) none of the user's digital assets; or
5707 (d) all of the user's digital assets to the court for review in camera.

5708 Section 180. Section **75A-6-106**, which is renumbered from Section 75-11-107 is
5709 renumbered and amended to read:

5710 ~~[75-11-107]~~. **75A-6-106. Disclosure of content of electronic**
5711 **communications of deceased user.**

5712 If a deceased user consented to or a court directs disclosure of the contents of electronic
5713 communications of the user, the custodian shall disclose to the personal representative of the
5714 estate of the user the content of an electronic communication sent or received by the user if the
5715 representative gives the custodian:

- 5716 (1) a written request for disclosure in physical or electronic form;
5717 (2) a certified copy of the death certificate of the user;
5718 (3) a certified copy of the letter of appointment of the representative or a small estate
5719 affidavit or court order;
5720 (4) unless the user provided direction using an online tool, a copy of the user's will,
5721 trust, power of attorney, or other record evidencing the user's consent to disclosure of the
5722 content of electronic communications; and
5723 (5) if requested by the custodian:
5724 (a) a number, username, address, or other unique subscriber or account identifier
5725 assigned by the custodian to identify the user's account;
5726 (b) evidence linking the account to the user; or
5727 (c) a finding by the court that:
5728 (i) the user had a specific account with the custodian, identifiable by the information
5729 specified in Subsection (5)(a);
5730 (ii) disclosure of the content of electronic communications of the user would not
5731 violate 18 U.S.C. Sec. 2701 et seq., 47 U.S.C. Sec. 222, or other applicable law;

5732 (iii) unless the user provided direction using an online tool, the user consented to
5733 disclosure of the content of electronic communications; or

5734 (iv) disclosure of the content of electronic communications of the user is reasonably
5735 necessary for administration of the estate.

5736 Section 181. Section **75A-6-107**, which is renumbered from Section 75-11-108 is
5737 renumbered and amended to read:

5738 ~~[75-11-108]~~. **75A-6-107. Disclosure of other digital assets of deceased**
5739 **user.**

5740 Unless the user prohibited disclosure of digital assets or the court directs otherwise, a
5741 custodian shall disclose to the personal representative of the estate of a deceased user a
5742 catalogue of electronic communications sent or received by the user and digital assets, other
5743 than the content of electronic communications, of the user, if the representative gives the
5744 custodian:

5745 (1) a written request for disclosure in physical or electronic form;

5746 (2) a certified copy of the death certificate of the user;

5747 (3) a certified copy of the letter of appointment of the representative, a small estate
5748 affidavit, or court order; and

5749 (4) if requested by the custodian:

5750 (a) a number, username, address, or other unique subscriber or account identifier
5751 assigned by the custodian to identify the user's account;

5752 (b) evidence linking the account to the user;

5753 (c) an affidavit stating that disclosure of the user's digital assets is reasonably necessary
5754 for administration of the estate; or

5755 (d) a finding by the court that:

5756 (i) the user had a specific account with the custodian, identifiable by the information
5757 specified in Subsection (4)(a); or

5758 (ii) disclosure of the user's digital assets is reasonably necessary for administration of
5759 the estate.

5760 Section 182. Section **75A-6-108**, which is renumbered from Section 75-11-109 is
5761 renumbered and amended to read:

5762 ~~[75-11-109]~~. **75A-6-108. Disclosure of content of electronic**

5763 **communications of principal.**

5764 To the extent a power of attorney expressly grants an agent authority over the content of
5765 electronic communications sent or received by the principal and unless directed otherwise by
5766 the principal or the court, a custodian shall disclose to the agent the content if the agent gives
5767 the custodian:

5768 (1) a written request for disclosure in physical or electronic form;

5769 (2) an original or copy of the power of attorney expressly granting the agent authority
5770 over the content of electronic communications of the principal;

5771 (3) a certification by the agent, under penalty of perjury, that the power of attorney is in
5772 effect; and

5773 (4) if requested by the custodian:

5774 (a) a number, username, address, or other unique subscriber or account identifier
5775 assigned by the custodian to identify the principal's account; or

5776 (b) evidence linking the account to the principal.

5777 Section 183. Section **75A-6-109**, which is renumbered from Section 75-11-110 is
5778 renumbered and amended to read:

5779 **[75-11-110]. 75A-6-109. Disclosure of other digital assets of principal.**

5780 Unless otherwise ordered by the court, directed by the principal, or provided by a power
5781 of attorney, a custodian shall disclose to an agent with specific authority over digital assets, or
5782 general authority to act on behalf of a principal, a catalogue of electronic communications sent
5783 or received by the principal and digital assets, other than the content of electronic
5784 communications, of the principal if the agent gives the custodian:

5785 (1) a written request for disclosure in physical or electronic form;

5786 (2) an original or a copy of the power of attorney that gives the agent specific authority
5787 over digital assets or general authority to act on behalf of the principal;

5788 (3) a certification by the agent, under penalty of perjury, that the power of attorney is in
5789 effect; and

5790 (4) if requested by the custodian:

5791 (a) a number, username, address, or other unique subscriber or account identifier
5792 assigned by the custodian to identify the principal's account; or

5793 (b) evidence linking the account to the principal.

5794 Section 184. Section **75A-6-110**, which is renumbered from Section 75-11-111 is
5795 renumbered and amended to read:

5796 ~~[75-11-111]~~. **75A-6-110. Disclosure of digital assets held in trust when**
5797 **trustee is original user.**

5798 Unless otherwise ordered by the court or provided in a trust, a custodian shall disclose
5799 to a trustee that is an original user of an account any digital asset of the account held in trust,
5800 including a catalogue of electronic communications of the trustee and the content of electronic
5801 communications.

5802 Section 185. Section **75A-6-111**, which is renumbered from Section 75-11-112 is
5803 renumbered and amended to read:

5804 ~~[75-11-112]~~. **75A-6-111. Disclosure of contents of electronic**
5805 **communications held in trust when trustee not original user.**

5806 Unless otherwise ordered by the court, directed by the user, or provided in a trust, a
5807 custodian shall disclose to a trustee that is not an original user of an account the content of an
5808 electronic communication sent or received by an original or successor user and carried,
5809 maintained, processed, received, or stored by the custodian in the account of the trust if the
5810 trustee gives the custodian:

- 5811 (1) a written request for disclosure in physical or electronic form;
- 5812 (2) a certified copy of the trust instrument or a certification of the trust under Section
5813 [75-7-1013](#) that includes consent to disclosure of the content of electronic communications to
5814 the trustee;
- 5815 (3) a certification by the trustee, under penalty of perjury, that the trust exists and the
5816 trustee is a currently acting trustee of the trust; and
- 5817 (4) if requested by the custodian:
- 5818 (a) a number, username, address, or other unique subscriber or account identifier
5819 assigned by the custodian to identify the trust's account; or
- 5820 (b) evidence linking the account to the trust.

5821 Section 186. Section **75A-6-112**, which is renumbered from Section 75-11-113 is
5822 renumbered and amended to read:

5823 ~~[75-11-113]~~. **75A-6-112. Disclosure of other digital assets held in trust**
5824 **when trustee not original user.**

5825 Unless otherwise ordered by the court, directed by the user, or provided in a trust, a
5826 custodian shall disclose, to a trustee that is not an original user of an account, a catalogue of
5827 electronic communications sent or received by an original or successor user and stored, carried,
5828 or maintained by the custodian in an account of the trust and any digital assets, other than the
5829 content of electronic communications, in which the trust has a right or interest if the trustee
5830 gives the custodian:

- 5831 (1) a written request for disclosure in physical or electronic form;
- 5832 (2) a certified copy of the trust instrument or a certification of the trust under Section
5833 [75-7-1013](#);
- 5834 (3) a certification by the trustee, under penalty of perjury, that the trust exists and the
5835 trustee is a currently acting trustee of the trust; and
- 5836 (4) if requested by the custodian:
- 5837 (a) a number, username, address, or other unique subscriber or account identifier
5838 assigned by the custodian to identify the trust's account; or
- 5839 (b) evidence linking the account to the trust.

5840 Section 187. Section **75A-6-113**, which is renumbered from Section 75-11-114 is
5841 renumbered and amended to read:

5842 ~~[75-11-114]~~. **75A-6-113. Disclosure of digital assets to conservator or**
5843 **guardian of protected person.**

5844 (1) After an opportunity for a hearing under Chapter 5, Protection of Persons Under
5845 Disability and Their Property, the court may grant a conservator or guardian access to the
5846 digital assets of a protected person.

5847 (2) Unless otherwise ordered by the court or directed by the user, a custodian shall
5848 disclose to a conservator or guardian the catalogue of electronic communications sent or
5849 received by a protected person and any digital assets, other than the content of electronic
5850 communications, in which the protected person has a right or interest if the conservator or
5851 guardian gives the custodian:

- 5852 (a) a written request for disclosure in physical or electronic form;
- 5853 (b) a certified copy of the court order that gives the conservator or guardian authority
5854 over the digital assets of the protected person; and
- 5855 (c) if requested by the custodian:

5856 (i) a number, username, address, or other unique subscriber or account identifier
5857 assigned by the custodian to identify the account of the protected person; or

5858 (ii) evidence linking the account to the protected person.

5859 (3) A conservator or guardian with general authority to manage the assets of a
5860 protected person may request a custodian of the digital assets of the protected person to
5861 suspend or terminate an account of the protected person for good cause. A request made under
5862 this section must be accompanied by a certified copy of the court order giving the conservator
5863 or guardian authority over the protected person's property.

5864 Section 188. Section **75A-6-114**, which is renumbered from Section 75-11-115 is
5865 renumbered and amended to read:

5866 ~~[75-11-115]~~. **75A-6-114. Fiduciary duty and authority.**

5867 (1) The legal duties imposed on a fiduciary charged with managing tangible property
5868 apply to the management of digital assets, including:

5869 (a) the duty of care;

5870 (b) the duty of loyalty; and

5871 (c) the duty of confidentiality.

5872 (2) A fiduciary's or designated recipient's authority with respect to a digital asset of a
5873 user:

5874 (a) except as otherwise provided in Section ~~[75-11-104]~~ 75A-6-103, is subject to the
5875 applicable terms of service;

5876 (b) is subject to other applicable law, including copyright law;

5877 (c) in the case of a fiduciary, is limited by the scope of the fiduciary's duties; and

5878 (d) may not be used to impersonate the user.

5879 (3) A fiduciary with authority over the property of a decedent, protected person,
5880 principal, or settlor has the right to access any digital asset in which the decedent, protected
5881 person, principal, or settlor had a right or interest and that is not held by a custodian or subject
5882 to a terms of service agreement.

5883 (4) A fiduciary acting within the scope of the fiduciary's duties is an authorized user of
5884 the property of the decedent, protected person, principal, or settlor for the purpose of applicable
5885 computer fraud and unauthorized computer access laws.

5886 (5) A fiduciary with authority over the tangible, personal property of a decedent,

5887 protected person, principal, or settlor:

5888 (a) has the right to access the property and any digital asset stored in it; and

5889 (b) is an authorized user for the purpose of computer fraud and unauthorized computer
5890 access laws.

5891 (6) A custodian may disclose information in an account to a fiduciary of the user when
5892 the information is required to terminate an account used to access digital assets licensed to the
5893 user.

5894 (7) A fiduciary of a user may request a custodian to terminate the user's account. A
5895 request for termination shall be in writing, in either physical or electronic form, and
5896 accompanied by:

5897 (a) if the user is deceased, a certified copy of the death certificate of the user;

5898 (b) a certified copy of the letter of appointment of the representative, a small estate
5899 affidavit, or court order, power of attorney, or trust giving the fiduciary authority over the
5900 account; and

5901 (c) if requested by the custodian:

5902 (i) a number, username, address, or other unique subscriber or account identifier
5903 assigned by the custodian to identify the user's account;

5904 (ii) evidence linking the account to the user; or

5905 (iii) a finding by the court that the user had a specific account with the custodian,
5906 identifiable by the information specified in Subsection (7)(c)(i).

5907 Section 189. Section **75A-6-115**, which is renumbered from Section 75-11-116 is
5908 renumbered and amended to read:

5909 ~~[75-11-116].~~ **75A-6-115. Custodian compliance and immunity.**

5910 (1) Not later than 60 days after receipt of the information required under Sections
5911 ~~[75-11-107 through 75-11-115]~~ 75A-6-106 through 75A-6-114, a custodian shall comply with
5912 a request under this chapter from a fiduciary or designated recipient to disclose digital assets or
5913 terminate an account. If the custodian fails to comply, the fiduciary or designated recipient may
5914 apply to the court for an order directing compliance.

5915 (2) An order under Subsection (1) directing compliance shall contain a finding that
5916 compliance is not in violation of 18 U.S.C. Sec. 2702.

5917 (3) A custodian may notify the user that a request for disclosure or to terminate an

5918 account was made under this chapter.

5919 (4) A custodian may deny a request under this chapter from a fiduciary or designated
5920 recipient for disclosure of digital assets or to terminate an account if the custodian is aware of
5921 any lawful access to the account following the receipt of the fiduciary's request.

5922 (5) This chapter does not limit a custodian's ability to obtain or require a fiduciary or
5923 designated recipient requesting disclosure or termination under this chapter to obtain a court
5924 order that:

5925 (a) specifies that an account belongs to the protected person or principal;

5926 (b) specifies that there is sufficient consent from the protected person or principal to
5927 support the requested disclosure; and

5928 (c) contains a finding required by law other than this chapter.

5929 (6) A custodian and its officers, employees, and agents are immune from liability for
5930 an act or omission done in good faith in compliance with this chapter.

5931 Section 190. Section **75A-6-116**, which is renumbered from Section 75-11-117 is
5932 renumbered and amended to read:

5933 ~~[75-11-117]~~. **75A-6-116. Uniformity of application and construction.**

5934 In applying and construing this uniform act, consideration shall be given to the need to
5935 promote uniformity of the law with respect to its subject matter among states that enact ~~[it]~~ this
5936 uniform law.

5937 Section 191. Section **75A-6-117**, which is renumbered from Section 75-11-118 is
5938 renumbered and amended to read:

5939 ~~[75-11-118]~~. **75A-6-117. Relation to Electronic Signatures in Global and**
5940 **National Commerce Act.**

5941 This chapter modifies, limits, or supersedes the Electronic Signatures in Global and
5942 National Commerce Act, 15 U.S.C. Sec. 7001 et seq., but does not modify, limit, or supersede
5943 Section 101(c) of that act or 15 U.S.C. Sec. 7001(c), or authorize electronic delivery of any of
5944 the notices described in Section 103(b) of that act or 15 U.S.C. Sec. 7003(b).

5945 Section 192. Section **75A-7-101**, which is renumbered from Section 22-5-2 is
5946 renumbered and amended to read:

5947 **CHAPTER 7. UNIFORM ACT FOR SIMPLIFICATION OF FIDUCIARY SECURITY**
5948 **TRANSFERS**

5949 ~~[22-5-2]~~. **75A-7-101. Definitions.**

5950 ~~[It]~~ As used in this chapter, unless the context otherwise requires:

5951 (1) "Assignment" includes any written stock power, bond power, bill of sale, deed,
5952 declaration of trust or other instrument of transfer.

5953 (2) "Claim of beneficial interest" includes a claim of any interest by a decedent's
5954 legatee, distributee, heir or creditor, a beneficiary under a trust, a ward, a beneficial owner of a
5955 security registered in the name of a nominee, or a minor owner of a security registered in the
5956 name of a custodian, or a claim of any similar interest, whether the claim is asserted by the
5957 claimant or by a fiduciary or by any other authorized person in his behalf, and includes a claim
5958 that the transfer would be in breach of fiduciary duties.

5959 (3) "Corporation" means a private or public corporation, association or trust issuing a
5960 security.

5961 (4) "Fiduciary" means an executor, administrator, trustee, guardian, committee,
5962 conservator, curator, tutor, custodian or nominee.

5963 (5) "Person" includes an individual, a corporation, government or governmental
5964 subdivision or agency, business trust, estate, trust, partnership or association, two or more
5965 persons having a joint or common interest, or any other legal or commercial entity.

5966 (6) "Security" includes any share of stock, bond, debenture, note or other security
5967 issued by a corporation which is registered as to ownership on the books of the corporation.

5968 (7) "Transfer" means a change on the books of a corporation in the registered
5969 ownership of a security.

5970 (8) "Transfer agent" means a person employed or authorized by a corporation to
5971 transfer securities issued by the corporation.

5972 Section 193. Section **75A-7-102**, which is renumbered from Section 22-5-3 is
5973 renumbered and amended to read:

5974 ~~[22-5-3]~~. **75A-7-102. Registration of security in the name of a fiduciary.**

5975 A corporation or transfer agent registering a security in the name of a person who is a
5976 fiduciary or who is described as a fiduciary is not bound to inquire into the existence, extent, or
5977 correct description of the fiduciary relationship, and thereafter the corporation and its transfer
5978 agent may assume without inquiry that the newly registered owner continues to be the fiduciary
5979 until the corporation or transfer agent receives written notice that the fiduciary is no longer

5980 acting as such with respect to the particular security.

5981 Section 194. Section **75A-7-103**, which is renumbered from Section 22-5-4 is
5982 renumbered and amended to read:

5983 ~~[22-5-4]~~. **75A-7-103. Assignment of security by a fiduciary.**

5984 Except as otherwise provided in this chapter, a corporation or transfer agent making a
5985 transfer of a security pursuant to an assignment by a fiduciary:

5986 (1) may assume without inquiry that the assignment, even though to the fiduciary
5987 himself or to his nominee, is within his authority and capacity and is not in breach of his
5988 fiduciary duties;

5989 (2) may assume without inquiry that the fiduciary has complied with any controlling
5990 instrument and with the law of the jurisdiction governing the fiduciary relationship, including
5991 any law requiring the fiduciary to obtain court approval of the transfer; and

5992 (3) is not charged with notice of and is not bound to obtain or examine any court record
5993 or any recorded or unrecorded document relating to the fiduciary relationship or the
5994 assignment, even though the record or document is in its possession.

5995 Section 195. Section **75A-7-104**, which is renumbered from Section 22-5-5 is
5996 renumbered and amended to read:

5997 ~~[22-5-5]~~. **75A-7-104. Assignment of security by a fiduciary -- Evidence of**
5998 **appointment or incumbency.**

5999 (1) A corporation or transfer agent making a transfer pursuant to an assignment by a
6000 fiduciary who is not the registered owner shall obtain the following evidence of appointment or
6001 incumbency:

6002 ~~[(1)]~~ (a) in the case of a fiduciary appointed or qualified by a court, a certificate issued
6003 by or under the direction or supervision of that court or an officer thereof and dated within 60
6004 days before the transfer; or

6005 ~~[(2)]~~ (b) in any other case, a copy of a document showing the appointment or a
6006 certificate issued by or on behalf of a person reasonably believed by the corporation or transfer
6007 agent to be responsible or, in the absence of such a document or certificate, other evidence
6008 reasonably deemed by the corporation or transfer agent to be appropriate.

6009 (2) Corporations and transfer agents may adopt standards with respect to evidence of
6010 appointment or incumbency under this subsection provided such standards are not manifestly

6011 unreasonable.

6012 (3) Neither the corporation nor transfer agent is charged with notice of the contents of
6013 any document obtained pursuant to this subsection except to the extent that the contents relate
6014 directly to the appointment or incumbency.

6015 Section 196. Section **75A-7-105**, which is renumbered from Section 22-5-6 is
6016 renumbered and amended to read:

6017 ~~[22-5-6]~~. **75A-7-105. Adverse claims to transfer of security by a fiduciary --**
6018 **Notice.**

6019 (1) (a) A person asserting a claim of beneficial interest adverse to the transfer of a
6020 security pursuant to an assignment by a fiduciary may give the corporation or transfer agent
6021 written notice of the claim.

6022 (b) The corporation or transfer agent is not put on notice unless the written notice
6023 identifies the claimant, the registered owner and the issue of which the security is a part,
6024 provides an address for communications directed to the claimant and is received before the
6025 transfer.

6026 (c) Nothing in this [act] chapter relieves the corporation or transfer agent of any
6027 liability for making or refusing to make the transfer after it is so put on notice, unless it
6028 proceeds in the manner authorized in Subsection (2).

6029 (2) (a) As soon as practicable after the presentation of a security for transfer pursuant to
6030 an assignment by a fiduciary, a corporation or transfer agent which has received notice of a
6031 claim of beneficial interest adverse to the transfer may send notice of the presentation by
6032 registered or certified mail to the claimant at the address given by him.

6033 (b) If the corporation or transfer agent so mails such a notice it shall withhold the
6034 transfer for 30 days after the mailing and shall then make the transfer unless restrained by a
6035 court order.

6036 Section 197. Section **75A-7-106**, which is renumbered from Section 22-5-7 is
6037 renumbered and amended to read:

6038 ~~[22-5-7]~~. **75A-7-106. Nonliability of corporation or transfer agent.**

6039 A corporation or transfer agent incurs no liability to any person by making a transfer or
6040 otherwise acting in a manner authorized by this [act] chapter.

6041 Section 198. Section **75A-7-107**, which is renumbered from Section 22-5-8 is

6042 renumbered and amended to read:

6043 ~~[22-5-8]~~. 75A-7-107. Nonliability of third persons.

6044 (1) ~~[No]~~ A person who participates in the acquisition, disposition, assignment or
6045 transfer of a security by or to a fiduciary, including a person who guarantees the signature of
6046 the fiduciary, is not liable for participation in any breach of fiduciary duty by reason of failure
6047 to inquire whether the transaction involves such a breach unless it is shown that ~~[he]~~ the person
6048 acted with actual knowledge that the proceeds of the transaction were being or were to be used
6049 wrongfully for the individual benefit of the fiduciary or that the transaction was otherwise in
6050 breach of duty.

6051 (2) If a corporation or transfer agent makes a transfer pursuant to an assignment by a
6052 fiduciary, a person who guaranteed the signature of the fiduciary is not liable on the guarantee
6053 to any person to whom the corporation or transfer agent by reason of this ~~[act]~~ chapter incurs
6054 no liability.

6055 (3) This section does not impose any liability upon the corporation or ~~[its]~~ the
6056 corporation's transfer agent.

6057 Section 199. Section **75A-7-108**, which is renumbered from Section 22-5-9 is
6058 renumbered and amended to read:

6059 ~~[22-5-9]~~. 75A-7-108. Territorial application of law to rights and duties of
6060 corporation or third persons.

6061 (1) The rights and duties of a corporation and ~~[its]~~ the corporation's transfer agents in
6062 registering a security in the name of a fiduciary or in making a transfer of a security pursuant to
6063 an assignment by a fiduciary are governed by the law of the jurisdiction under whose laws the
6064 corporation is organized.

6065 (2) This chapter applies to the rights and duties of a person other than the corporation
6066 and its transfer agents with regard to acts and omissions in this state in connection with the
6067 acquisition, disposition, assignment, or transfer of a security by or to a fiduciary and of a
6068 person who guarantees in this state the signature of a fiduciary in connection with such a
6069 transaction.

6070 Section 200. Section **75A-7-109**, which is renumbered from Section 22-5-10 is
6071 renumbered and amended to read:

6072 ~~[22-5-10]~~. 75A-7-109. Tax obligations not affected .

6073 This ~~[act]~~ chapter does not affect any obligation of a corporation or transfer agent with
 6074 respect to estate, inheritance, succession or other taxes imposed by the laws of this state.

6075 Section 201. Section **75A-7-110**, which is renumbered from Section 22-5-11 is
 6076 renumbered and amended to read:

6077 ~~[22-5-11]~~. **75A-7-110. Construction.**

6078 This ~~[act]~~ uniform act shall be so construed as to effectuate ~~[its]~~ the act's general
 6079 purpose to make uniform the law of those states which enact ~~[it]~~ this uniform act.

6080 Section 202. Section **75A-8-101**, which is renumbered from Section 75-5a-102 is
 6081 renumbered and amended to read:

6082 **CHAPTER 8. UNIFORM TRANSFERS TO MINOR ACT**

6083 ~~[75-5a-102]~~. **75A-8-101. Definitions.**

6084 As used in this ~~[part]~~ chapter:

6085 (1) "Adult" means an individual who is 21 years ~~[of age]~~ old or older.

6086 (2) "Beneficiary" means the same as that term is defined in Section 75-1-201.

6087 ~~[(2)]~~ (3) "Benefit plan" means an employer's plan for the benefit of an employee or
 6088 partner.

6089 ~~[(3)]~~ (4) "Broker" means a person lawfully engaged in the business of effecting
 6090 transactions in securities or commodities for the person's own account or for the accounts of
 6091 others.

6092 (5) "Claims" means the same as that term is defined in Section 75-1-201.

6093 ~~[(4)]~~ (6) "Conservator" means a person appointed or qualified by a court to act as
 6094 general, limited, or temporary guardian of a minor's property or a person legally authorized to
 6095 perform substantially the same functions.

6096 ~~[(5)]~~ (7) "Court" means the ~~[probate division of the district court for the]~~ court in the
 6097 county in which the custodian resides.

6098 ~~[(6)]~~ (8) "Custodial property" means:

6099 (a) any interest in property transferred to a custodian under this ~~[part]~~ chapter; and

6100 (b) the income from and proceeds of that interest in property.

6101 ~~[(7)]~~ (9) "Custodian" means a person so designated under Section ~~[75-5a-110]~~

6102 75A-8-109 or a successor or substitute custodian designated under Section ~~[75-5a-119]~~

6103 75A-8-118.

- 6104 (10) "Estate" means the same as that term is defined in Section 75-1-201.
- 6105 (11) "Fiduciary" means the same as that term is defined in Section 75-1-201.
- 6106 ~~[(8)]~~ (12) "Financial institution" means a bank, trust company, savings institution, or
6107 credit union, chartered and supervised under state or federal law.
- 6108 (13) "Governing instrument" means the same as that term is defined in Section
6109 75-1-201.
- 6110 (14) "Guardian" means the same as that term is defined in Section 75-1-201.
- 6111 (15) "Incapacitated" means the same as that term is defined in Section 75-1-201.
- 6112 (16) "Incapacity" means the same as that term is defined in Section 75-1-201.
- 6113 (17) "Interested person" means the same as that term is defined in Section 75-1-201.
- 6114 ~~[(9)]~~ (18) "Legal representative" means an individual's personal representative or
6115 conservator.
- 6116 ~~[(10)]~~ (19) "Member of the minor's family" means the minor's parent, stepparent,
6117 spouse, grandparent, brother, sister, uncle, or aunt, whether of the whole or half blood or by
6118 adoption.
- 6119 ~~[(11)]~~ (20) "Minor" means an individual who is ~~[not yet 21 years of age]~~ under 21
6120 years old.
- 6121 (21) "Parent" means the same as that term is defined in Section 75-1-201.
- 6122 (22) "Payor" means the same as that term is defined in Section 75-1-201.
- 6123 ~~[(12)]~~ (23) "Person" means an individual, corporation, organization as defined in
6124 Section 75-1-201, or other legal entity.
- 6125 ~~[(13)]~~ (24) "Personal representative" means an executor, administrator, successor
6126 personal representative as defined in Section 75-1-201, or special administrator as defined in
6127 Section 75-1-201, of a decedent's estate or a person legally authorized to perform substantially
6128 the same functions.
- 6129 (25) "Petition" means the same as that term is defined in Section 75-1-201.
- 6130 (26) "Property" means the same as that term is defined in Section 75-1-201.
- 6131 (27) "Record" means the same as that term is defined in Section 75-1-201.
- 6132 (28) "Security" means the same as that term is defined in Section 75-1-201.
- 6133 ~~[(14)]~~ (29) "State" includes any state of the United States, the district of Columbia, the
6134 Commonwealth of Puerto Rico, and any territory or possession subject to the legislative

6135 authority of the United States.

6136 (30) "Testator" means the same as that term is defined in Section [75-1-201](#).

6137 ~~[(15)]~~ (31) "Transfer" means a transaction that creates custodial property under Section
6138 ~~[75-5a-110]~~ [75A-8-109](#).

6139 ~~[(16)]~~ (32) "Transferor" means a person who makes a transfer under this ~~[part]~~ chapter.

6140 (33) "Trust" means the same as that term is defined in Section [75-1-201](#).

6141 ~~[(17)]~~ (34) "Trust company" means a financial institution, corporation, or other legal
6142 entity, authorized to exercise general trust powers.

6143 (35) "Trustee" means the same as that term is defined in Section [75-1-201](#).

6144 (36) "Will" means the same as that term is defined in Section [75-1-201](#).

6145 Section 203. Section **75A-8-102**, which is renumbered from Section 75-5a-103 is
6146 renumbered and amended to read:

6147 ~~[75-5a-103]~~. **75A-8-102. Scope and jurisdiction.**

6148 (1) (a) This ~~[part]~~ chapter applies to a transfer that refers to this ~~[part]~~ chapter in the
6149 designation under Subsection ~~[75-5a-110(1)]~~ [75A-8-109\(1\)](#) by which the transfer is made if at
6150 the time of the transfer, the transferor, the minor, or the custodian is a resident of this state, or
6151 the custodial property is located in this state.

6152 (b) The custodianship created remains subject to this ~~[part]~~ chapter despite a
6153 subsequent change in residence of a transferor, the minor, or the custodian, or the removal of
6154 custodial property from this state.

6155 (2) A person designated as custodian under this ~~[part]~~ chapter is subject to personal
6156 jurisdiction in this state regarding any matter relating to the custodianship.

6157 (3) A transfer that purports to be made and is valid under the Uniform Transfers to
6158 Minors Act, the Uniform Gifts to Minors Act, or a substantially similar act of another state is
6159 governed by the laws of the designated state and may be executed and is enforceable in this
6160 state if at the time of the transfer, the transferor, the minor, or the custodian is a resident of the
6161 designated state, or the custodial property is located in the designated state.

6162 Section 204. Section **75A-8-103**, which is renumbered from Section 75-5a-104 is
6163 renumbered and amended to read:

6164 ~~[75-5a-104]~~. **75A-8-103. Nomination of custodian.**

6165 (1) (a) A person having the right to designate the recipient of property transferable

6166 upon the occurrence of a future event may revocably nominate a custodian to receive the
6167 property for a minor beneficiary upon the occurrence of the event by naming the custodian
6168 followed in substance by the words: "as custodian for (name of minor) under the
6169 Uniform Transfers to Minors Act."

6170 (b) The nomination may name one or more persons as substitute custodians to whom
6171 the property must be transferred, in the order named, if the first nominated custodian dies
6172 before the transfer or is unable, declines, or is ineligible to serve.

6173 (c) The nomination may be made in a will, a trust, a deed, an instrument exercising a
6174 power of appointment, or in a writing designating a beneficiary of contractual rights which is
6175 registered with or delivered to the payor, issuer, or other obligor of the contractual rights.

6176 (2) A custodian nominated under this section must be a person to whom a transfer of
6177 property of that kind may be made under Subsection [~~75-5a-110~~(+)] [75A-8-109](#)(1).

6178 (3) (a) The nomination of a custodian under this section does not create custodial
6179 property until the nominating instrument becomes irrevocable or a transfer to the nominated
6180 custodian is completed under Section [~~75-5a-110~~] [75A-8-109](#).

6181 (b) Unless the nomination of a custodian has been revoked, upon the occurrence of the
6182 future event the custodianship becomes effective and the custodian shall enforce a transfer of
6183 the custodial property under Section [~~75-5a-110~~] [75A-8-109](#).

6184 Section 205. Section **75A-8-104**, which is renumbered from Section 75-5a-105 is
6185 renumbered and amended to read:

6186 [~~75-5a-105~~]. **75A-8-104. Transfer by gift or exercise of power of**
6187 **appointment.**

6188 A person may make a transfer by irrevocable gift to, or the irrevocable exercise of a
6189 power of appointment in favor of, a custodian for the benefit of a minor under Section
6190 [~~75-5a-110~~] [75A-8-109](#).

6191 Section 206. Section **75A-8-105**, which is renumbered from Section 75-5a-106 is
6192 renumbered and amended to read:

6193 [~~75-5a-106~~]. **75A-8-105. Transfer authorized by will or trust.**

6194 (1) A personal representative or trustee may make an irrevocable transfer under Section
6195 [~~75-5a-110~~] [75A-8-109](#) to a custodian for the benefit of a minor as authorized in the governing
6196 will or trust.

6197 (2) If the testator or settlor has nominated a custodian under Section [~~75-5a-104~~]
 6198 [75A-8-103](#) to receive the custodial property, the transfer must be made to that person.

6199 (3) If the testator or settlor has not nominated a custodian under Section [~~75-5a-104~~]
 6200 [75A-8-103](#), or all persons nominated as custodian die before the transfer or are unable, decline,
 6201 or are ineligible to serve, the personal representative or the trustee, as the case may be, shall
 6202 designate the custodian from among those eligible to serve as custodian for property of that
 6203 kind under Subsection [~~75-5a-110(1)~~] [75A-8-109\(1\)](#).

6204 Section 207. Section **75A-8-106**, which is renumbered from Section 75-5a-107 is
 6205 renumbered and amended to read:

6206 [~~75-5a-107~~]. **75A-8-106. Other transfer by fiduciary.**

6207 (1) Subject to Subsection (3), a personal representative or trustee may make an
 6208 irrevocable transfer to another adult or trust company as custodian for the benefit of a minor
 6209 under Section [~~75-5a-110~~] [75A-8-109](#), in the absence of a will or under a will or trust that does
 6210 not contain an authorization to do so.

6211 (2) Subject to Subsection (3), a conservator may make an irrevocable transfer to
 6212 another adult or trust company as custodian for the benefit of the minor pursuant to Section
 6213 [~~75-5a-110~~] [75A-8-109](#).

6214 (3) A transfer under Subsection [~~75-5a-110(1)~~] [75A-8-109\(1\)](#) or (2) may be made only
 6215 if:

6216 (a) the personal representative, trustee, or conservator considers the transfer to be in the
 6217 best interest of the minor;

6218 (b) the transfer is not prohibited by or inconsistent with provisions of the applicable
 6219 will, trust agreement, or other governing instrument; and

6220 (c) the transfer is authorized by the court, if it exceeds \$10,000 in value.

6221 Section 208. Section **75A-8-107**, which is renumbered from Section 75-5a-108 is
 6222 renumbered and amended to read:

6223 [~~75-5a-108~~]. **75A-8-107. Transfer by obligor.**

6224 (1) Subject to Subsections (2) and (3), a person not subject to Section [~~75-5a-106~~ or
 6225 ~~75-5a-107~~] [75A-8-105](#) or [75A-8-106](#) who holds property of or owes a liquidated debt to a
 6226 minor not having a conservator, may make an irrevocable transfer to a custodian for the benefit
 6227 of the minor under Section [~~75-5a-110~~] [75A-8-109](#).

6228 (2) If a person having the right under Section [~~75-5a-104~~] 75A-8-103 has nominated a
6229 custodian under that section to receive the custodial property, the transfer must be made to that
6230 person.

6231 (3) If no custodian has been nominated under Section [~~75-5a-104~~] 75A-8-103, or all
6232 persons nominated as custodian die before the transfer or are unable, decline, or are ineligible
6233 to serve, a transfer under this section may be made to an adult member of the minor's family or
6234 to a trust company unless the property exceeds \$10,000 in value.

6235 Section 209. Section **75A-8-108**, which is renumbered from Section 75-5a-109 is
6236 renumbered and amended to read:

6237 ~~[75-5a-109]~~. **75A-8-108. Receipt for custodial property.**

6238 A written acknowledgment of delivery by a custodian is sufficient receipt and discharge
6239 for custodial property transferred to the custodian under this [part] chapter.

6240 Section 210. Section **75A-8-109**, which is renumbered from Section 75-5a-110 is
6241 renumbered and amended to read:

6242 ~~[75-5a-110]~~. **75A-8-109. Manner of creating custodial property and**
6243 **effecting transfer -- Designation of initial custodian -- Control.**

6244 (1) Custodial property is created and a transfer is made when:

6245 (a) an uncertificated security or a certificated security in registered form is either:

6246 (i) registered in the name of the transferor, an adult other than the transferor, or a trust
6247 company, followed in substance by the words: "as custodian for (name of minor)
6248 under the Uniform Transfers to Minors Act"; or

6249 (ii) delivered if in certificated form, or any document necessary for the transfer of an
6250 uncertificated security is delivered, together with any necessary endorsement, to an adult other
6251 than the transferor or to a trust company as custodian, accompanied by an instrument in
6252 substantially the form in Subsection (2);

6253 (b) money is paid or delivered, or a security held in the name of a broker, financial
6254 institution, or its nominee is transferred to a broker, or financial institution for credit to an
6255 account in the name of the transferor, an adult other than the transferor, or a trust company,
6256 followed in substance by the words: "as custodian for (name of minor) under the
6257 Uniform Transfers to Minors Act";

6258 (c) the ownership of a life or endowment insurance policy or annuity contract is either:

6259 (i) registered with the issuer in the name of the transferor, an adult other than the
6260 transferor, or a trust company, followed in substance by the words: "as custodian for
6261 (name of minor) under the Uniform Transfers to Minors Act"; or

6262 (ii) assigned in a writing delivered to an adult other than the transferor or to a trust
6263 company whose name in the assignment is followed in substance by the words: "as custodian
6264 for (name of minor) under the Uniform Transfers to Minors Act";

6265 (d) an irrevocable exercise of a power of appointment or an irrevocable present right to
6266 future payment under a contract is the subject of a written notification delivered to the payor,
6267 issuer, or other obligor that the right is transferred to the transferor, an adult other than the
6268 transferor, or a trust company, whose name in the notification is followed in substance by the
6269 words: "as custodian for (name of minor) under the Uniform Transfers to Minors
6270 Act";

6271 (e) an interest in real property is recorded in the name of the transferor, an adult other
6272 than the transferor, or a trust company, followed in substance by the words: "as custodian for
6273 (name of minor) under the Uniform Transfers to Minors Act";

6274 (f) a certificate of title issued by a department or agency of a state or of the United
6275 States which evidences title to tangible personal property is either:

6276 (i) issued in the name of the transferor, an adult other than the transferor, or a trust
6277 company, followed in substance by the words: "as custodian for (name of minor)
6278 under the Uniform Transfers to Minors Act"; or

6279 (ii) delivered to an adult other than the transferor or to a trust company, endorsed to
6280 that person followed in substance by the words: "as custodian for (name of minor)
6281 under the Uniform Transfers to Minors Act";

6282 (g) an interest in any property not described in Subsections (1)(a) through (f) is
6283 transferred to an adult other than the transferor or to a trust company by a written instrument in
6284 substantially the form set forth in Subsection (2); or

6285 (h) contributions are made into a custodial account at the Utah Educational Savings
6286 Plan in accordance with Title 53B, Chapter 8a, Utah Educational Savings Plan.

6287 (2) An instrument in the following form satisfies the requirements of Subsections
6288 (1)(a)(ii) and (1)(g): "Transfer Under the Uniform Transfers to Minors Act

6289 I, (name of transferor or name and representative capacity if a fiduciary)

6290 hereby transfer to (name of custodian), as custodian for (name of minor)
6291 under the Uniform Transfers to Minors Act, the following: (insert a description of the custodial
6292 property sufficient to identify it).

6293 Dated:
6294
6295 (Signature)

6296 (name of custodian) acknowledges receipt of the property described above
6297 as custodian for the minor named above under the Uniform Transfers to Minors Act.

6298 Dated:
6299
6300 (Signature of Custodian)"

6301 (3) A transferor shall place the custodian in control of the custodial property as soon as
6302 practicable.

6303 Section 211. Section **75A-8-110**, which is renumbered from Section 75-5a-111 is
6304 renumbered and amended to read:

6305 ~~[75-5a-111]~~. **75A-8-110. Single custodianship.**

6306 (1) A transfer may be made only for one minor, and only one person may be the
6307 custodian.

6308 (2) All custodial property held under this [part] chapter by the same custodian for the
6309 benefit of the same minor constitutes a single custodianship.

6310 Section 212. Section **75A-8-111**, which is renumbered from Section 75-5a-112 is
6311 renumbered and amended to read:

6312 ~~[75-5a-112]~~. **75A-8-111. Validity and effect of transfer.**

6313 (1) The validity of a transfer made in a manner prescribed in this [part] chapter is not
6314 affected by:

6315 (a) failure of the transferor to comply with Subsection ~~[75-5a-110(3)]~~ 75A-8-109(3)
6316 concerning possession and control;

6317 (b) designation of an ineligible custodian, except designation of the transferor in the
6318 case of property for which the transferor is ineligible to serve as custodian under Subsection
6319 ~~[75-5a-110(1)]~~ 75A-8-109(1); or

6320 (c) death or incapacity of a person nominated under Section ~~[75-5a-104]~~ 75A-8-103 or

6321 designated under Section ~~[75-5a-110]~~ 75A-8-109 as custodian or the disclaimer of the office by
6322 that person.

6323 (2) (a) A transfer made under Section ~~[75-5a-110]~~ 75A-8-109 is irrevocable, and the
6324 custodial property is indefeasibly vested in the minor, but the custodian has all the rights,
6325 powers, duties, and authority provided in this ~~[part]~~ chapter.

6326 (b) ~~[Neither the minor nor the minor's legal representative has]~~ A minor, or a minor's
6327 representative, does not have any right, power, duty, or authority regarding the custodial
6328 property except as provided in this ~~[part]~~ chapter.

6329 (3) By making a transfer, the transferor incorporates in the disposition all the
6330 provisions of this ~~[part]~~ chapter and grants to the custodian, and to any third person dealing
6331 with a person designated as custodian, the respective powers, rights, and immunities provided
6332 in this ~~[part]~~ chapter.

6333 Section 213. Section **75A-8-112**, which is renumbered from Section 75-5a-113 is
6334 renumbered and amended to read:

6335 ~~[75-5a-113]~~. **75A-8-112. Care of custodial property.**

6336 (1) A custodian shall:

6337 (a) take control of custodial property;

6338 (b) register or record title to custodial property if appropriate; and

6339 (c) collect, hold, manage, invest, and reinvest custodial property.

6340 (2) (a) In dealing with custodial property, a custodian shall observe the standard of care
6341 that would be observed by a prudent person dealing with property of another and is not limited
6342 by any other statute restricting investments by fiduciaries.

6343 (b) If a custodian has a special skill or expertise or is named custodian on the basis of
6344 representations of a special skill or expertise, the custodian shall use the skill or expertise.

6345 (c) However, a custodian may, in ~~[his]~~ the custodian's discretion and without liability
6346 to the minor or the minor's estate, retain any custodial property received from a transferor.

6347 (3) A custodian may invest in or pay premiums on life insurance or endowment
6348 policies on:

6349 (a) the life of the minor only if the minor or the minor's estate is the sole beneficiary; or

6350 (b) the life of another person in whom the minor has an insurable interest only to the
6351 extent the minor, the minor's estate, or the custodian in the capacity of custodian, is the

6352 irrevocable beneficiary.

6353 (4) (a) A custodian shall at all times keep custodial property separate and distinct from
6354 all other property in a manner sufficient to identify it clearly as custodial property of the minor.

6355 (b) (i) Custodial property consisting of an undivided interest is so identified if the
6356 minor's interest is held as a tenant in common and is fixed.

6357 (ii) Custodial property subject to recordation is so identified if it is recorded, and
6358 custodial property subject to registration is so identified if it is either registered, or held in an
6359 account designated, in the name of the custodian, followed in substance by the words: "as a
6360 custodian for (name of minor) under the Uniform Transfers to Minors Act."

6361 (5) A custodian shall keep records of all transactions with respect to custodial property,
6362 including information necessary for the preparation of the minor's tax returns, and shall make
6363 them available for inspection at reasonable intervals by a parent or legal representative of the
6364 minor or by the minor if the minor is 14 years ~~[of age]~~ old or older.

6365 Section 214. Section ~~75A-8-113~~, which is renumbered from Section 75-5a-114 is
6366 renumbered and amended to read:

6367 ~~[75-5a-114]~~. 75A-8-113. Powers of custodian.

6368 (1) A custodian, acting in a custodial capacity, has all the rights, powers, and authority
6369 over custodial property that unmarried adult owners have over their own property, but a
6370 custodian may exercise those rights, powers, and authority in that capacity only.

6371 (2) This section does not relieve a custodian from liability for breach of Section
6372 ~~[75-5a-113]~~ 75A-8-112.

6373 Section 215. Section ~~75A-8-114~~, which is renumbered from Section 75-5a-115 is
6374 renumbered and amended to read:

6375 ~~[75-5a-115]~~. 75A-8-114. Use of custodial property.

6376 (1) A custodian may deliver or pay to the minor or expend for the minor's benefit so
6377 much of the custodial property as the custodian considers advisable for the use and benefit of
6378 the minor, without court order and without regard to:

6379 (a) the duty or ability of the custodian personally or of any other person to support the
6380 minor; or

6381 (b) any other income or property of the minor which may be applicable or available for
6382 that purpose.

6383 (2) On petition of an interested person, or the minor if the minor is 14 years [~~of age~~
 6384 old or older, the court may order the custodian to deliver or pay to the minor or expend for the
 6385 minor's benefit so much of the custodial property as the court considers advisable for the use
 6386 and benefit of the minor.

6387 (3) A delivery, payment, or expenditure under this section is in addition to, not in
 6388 substitution for, and does not affect any obligation of a person to support the minor.

6389 Section 216. Section **75A-8-115**, which is renumbered from Section 75-5a-116 is
 6390 renumbered and amended to read:

6391 ~~[75-5a-116].~~ **75A-8-115. Custodian's expenses, compensation, and bond.**

6392 (1) A custodian is entitled to reimbursement from custodial property for reasonable
 6393 expenses incurred in the performance of the custodian's duties.

6394 (2) Except for one who is a transferor under Section [~~75-5a-105~~] 75A-8-104, a
 6395 custodian has a noncumulative election during each calendar year to charge reasonable
 6396 compensation for services performed during that year.

6397 (3) Except as provided in Subsection [~~75-5a-119(6)~~] 75A-8-118(6), a custodian need
 6398 not give a bond.

6399 Section 217. Section **75A-8-116**, which is renumbered from Section 75-5a-117 is
 6400 renumbered and amended to read:

6401 ~~[75-5a-117].~~ **75A-8-116. Exemption of third person from liability.**

6402 A third person in good faith and without court order may act on the instructions of or
 6403 otherwise deal with any person purporting to make a transfer or purporting to act in the
 6404 capacity of a custodian and, in the absence of knowledge, is not responsible for determining:

6405 (1) the validity of the purported custodian's designation;

6406 (2) the propriety of, or the authority under this [~~part~~] chapter for, any act of the
 6407 purported custodian;

6408 (3) the validity or propriety under this [~~part~~] chapter of any instrument or instructions
 6409 executed or given either by the person purporting to make transfer or by the purported
 6410 custodian; or

6411 (4) the propriety of the application of any property of the minor delivered to the
 6412 purported custodian.

6413 Section 218. Section **75A-8-117**, which is renumbered from Section 75-5a-118 is

6414 renumbered and amended to read:

6415 ~~[75-5a-118]~~. 75A-8-117. Liability to third persons.

6416 (1) A claim may be asserted against the custodial property by proceeding against the
6417 custodian in the custodial capacity, whether or not the custodian or the minor is personally
6418 liable, if the claim is based on:

6419 (a) a contract entered into by a custodian acting in a custodial capacity;

6420 (b) an obligation arising from the ownership or control of custodial property; or

6421 (c) a tort committed during the custodianship.

6422 (2) A custodian is not personally liable:

6423 (a) on a contract properly entered into in the custodial capacity unless the custodian
6424 fails to reveal that capacity and to identify the custodianship in the contract; or

6425 (b) for an obligation arising from control of custodial property or for a tort committed
6426 during the custodianship unless the custodian is personally at fault.

6427 (3) A minor is not personally liable for an obligation arising from ownership of
6428 custodial property or for a tort committed during the custodianship unless the minor is
6429 personally at fault.

6430 Section 219. Section **75A-8-118**, which is renumbered from Section 75-5a-119 is
6431 renumbered and amended to read:

6432 ~~[75-5a-119]~~. 75A-8-118. Renunciation, resignation, death, or removal of
6433 custodian -- Designation of successor custodian.

6434 (1) (a) A person nominated under Section ~~[75-5a-104]~~ 75A-8-103 or designated under
6435 Section ~~[75-5a-110]~~ 75A-8-109 as custodian may decline to serve by delivering a valid
6436 disclaimer to the person who made the nomination or to the transferor or the transferor's legal
6437 representative.

6438 (b) If the event giving rise to a transfer has not occurred and no substitute custodian
6439 able, willing, and eligible to serve was nominated under Section ~~[75-5a-104]~~ 75A-8-103, the
6440 person who made the nomination may nominate a substitute custodian under Section
6441 ~~[75-5a-104]~~ 75A-8-103; otherwise the transferor or the transferor's legal representative shall
6442 designate a substitute custodian at the time of the transfer, in either case from among the
6443 persons eligible to serve as custodian for that kind of property under Subsection ~~[75-5a-110(1)]~~
6444 75A-8-109(1).

6445 (c) The custodian designated has the rights of a successor custodian.

6446 (2) (a) A custodian at any time may designate a trust company or an adult other than a
6447 transferor under Section [~~75-5a-105~~] [75A-8-104](#) as successor custodian by executing and
6448 dating an instrument of designation before a subscribing witness other than the successor.

6449 (b) If the instrument of designation does not contain or is not accompanied by the
6450 resignation of the custodian, the designation of the successor does not take effect until the
6451 custodian resigns, dies, becomes incapacitated, or is removed.

6452 (3) A custodian may resign at any time by delivering written notice to the minor if the
6453 minor is 14 years [~~of age~~] old or older and to the successor custodian and by delivering the
6454 custodial property to the successor custodian.

6455 (4) (a) (i) If a custodian is ineligible, dies, or becomes incapacitated without having
6456 effectively designated a successor and the minor is 14 years [~~of age~~] old or older, the minor
6457 may designate as successor custodian, in the manner prescribed in Subsection (2), an adult
6458 member of the minor's family, a conservator of the minor, or a trust company.

6459 (ii) If the minor is not yet 14 years [~~of age~~] old or fails to act within 60 days after the
6460 ineligibility, death, or incapacity, the conservator of the minor becomes successor custodian.

6461 (b) If the minor has no conservator or the conservator declines to act, the transferor, the
6462 legal representative of the transferor or of the custodian, an adult member of the minor's family,
6463 or any other interested person may petition the court to designate a successor custodian.

6464 (5) A custodian who declines to serve under Subsection (1) or resigns under Subsection
6465 (3), or the legal representative of a deceased or incapacitated custodian shall as soon as
6466 practicable place the custodial property and records in the possession and control of the
6467 successor custodian. The successor custodian by action may enforce the obligation to deliver
6468 custodial property and records and becomes responsible for each item as received.

6469 (6) A transferor, the legal representative of a transferor, an adult member of the minor's
6470 family, a guardian of the person of the minor, the conservator of the minor, or the minor if [~~he~~
6471 ~~is 14 years of age~~] the minor is 14 years old or older, may petition the court to remove the
6472 custodian for cause and to designate a successor custodian other than a transferor under Section
6473 [~~75-5a-105~~] [75A-8-104](#) or to require the custodian to give appropriate bond.

6474 Section 220. Section **75A-8-119**, which is renumbered from Section 75-5a-120 is
6475 renumbered and amended to read:

6476 ~~[75-5a-120]~~. 75A-8-119. **Accounting by and determination of liability of**
6477 **custodian.**

6478 (1) A minor who is 14 years ~~[of age]~~ old or older, the minor's guardian of the person or
6479 legal representative, an adult member of the minor's family, a transferor, or a transferor's legal
6480 representative may petition the court:

6481 (a) for an accounting by the custodian or the custodian's legal representative; or

6482 (b) for a determination of responsibility, as between the custodial property and the
6483 custodian personally, for claims against the custodial property unless the responsibility has
6484 been adjudicated in an action under Section ~~[75-5a-118]~~ 75A-8-117 to which the minor or the
6485 minor's legal representative was a party.

6486 (2) A successor custodian may petition the court for an accounting by the predecessor
6487 custodian.

6488 (3) The court, in a proceeding under this ~~[part]~~ chapter or in any other proceeding, may
6489 require or permit the custodian or the custodian's legal representative to account.

6490 (4) If a custodian is removed under Subsection ~~[75-5a-119(6)]~~ 75A-8-118(6), the court
6491 shall require an accounting and order delivery of the custodial property and records to the
6492 successor custodian and the execution of all instruments required for transfer of the custodial
6493 property.

6494 Section 221. Section **75A-8-120**, which is renumbered from Section 75-5a-121 is
6495 renumbered and amended to read:

6496 ~~[75-5a-121]~~. 75A-8-120. **Termination of custodianship.**

6497 The custodian shall transfer in an appropriate manner the custodial property to the
6498 minor or to the minor's estate upon the earlier of:

6499 (1) the minor's becoming 21 years ~~[of age]~~ old with respect to custodial property
6500 transferred under Section ~~[75-5a-105 or 75-5a-106]~~ 75A-8-104 or 75A-8-105;

6501 (2) the minor's attainment of majority under the laws of this state with respect to the
6502 custodial property transferred under Section ~~[75-5a-107 or 75-5a-108]~~ 75A-8-106 or
6503 75A-8-107; or

6504 (3) the minor's death.

6505 Section 222. Section **75A-8-121**, which is renumbered from Section 75-5a-122 is
6506 renumbered and amended to read:

6507 ~~[75-5a-122]~~. **75A-8-121. Applicability.**

6508 This [part] chapter applies to a transfer within the scope of Section ~~[75-5a-103]~~

6509 75A-8-102 made after its effective date if:

6510 (1) the transfer purports to have been made under the Uniform Gifts to Minors Act; or

6511 (2) the instrument by which the transfer purports to have been made uses in substance
6512 the designation "as custodian under the Uniform Gifts to Minors Act" or "as custodian under
6513 the Uniform Transfers to Minors Act" of any other state, and the application of this part is
6514 necessary to validate the transfer.

6515 Section 223. Section **75A-8-122**, which is renumbered from Section 75-5a-123 is
6516 renumbered and amended to read:

6517 ~~[75-5a-123]~~. **75A-8-122. Effect on existing custodianships.**

6518 (1) Any transfer of custodial property as now defined in this [part] chapter made before
6519 July 1, 1990, is validated notwithstanding that there was no specific authority in the Uniform
6520 Gifts to Minors Act for the coverage of custodial property of that kind or for a transfer from
6521 that source at the time the transfer was made.

6522 (2) This [part] chapter applies to all transfers made before July 1, 1990, in a manner
6523 and form prescribed in the Uniform Gifts to Minors Act, except as the application impairs
6524 constitutionally vested rights or extends the duration of custodianships in existence on July 1,
6525 1990.

6526 (3) Sections ~~[75-5a-102 and 75-5a-121]~~ 75A-8-101 and 75A-8-120 regarding the age
6527 of a minor for whom custodial property is held under this [part] chapter do not apply to
6528 custodial property held in a custodianship that terminated because of the minor's attainment of
6529 the age of majority and before July 1, 1990.

6530 Section 224. Section **75B-1-101** is enacted to read:

6531 **TITLE 75B. TRUSTS**

6532 **CHAPTER 1. GENERAL PROVISIONS**

6533 **Part 1. General Provisions**

6534 **75B-1-101. Reserved for definitions.**

6535 Reserved.

6536 Section 225. Section **75B-1-102** is enacted to read:

6537 **75B-1-102. Transition clause.**

6538 If, at the time a trust or another legal document was executed, the document contained a
6539 correct citation to a provision in Title 22, Fiduciaries and Trusts, and Title 75, Utah Uniform
6540 Probate Code, that, after the execution of the document, was renumbered and amended for
6541 inclusion in this title, that citation is a valid citation to the same provision in this title.

6542 Section 226. Section **75B-1-103**, which is renumbered from Section 22-2-1 is
6543 renumbered and amended to read:

6544 ~~[22-2-1].~~ **75B-1-103. Death of trustee -- Trust estate vests in successor.**

6545 Upon the death of a sole or surviving trustee of an express trust:

6546 (1) the trust estate does not descend to [his] the trustee's heirs or pass to [his] the
6547 trustee's personal representatives~~[- but shall by virtue hereof, upon the appointment and~~
6548 ~~qualification of a successor to such trustee, become immediately vested in such successor in~~
6549 trust.]; and

6550 (2) the trust estate immediately vests in the successor trustee upon the appointment and
6551 qualification of a successor trustee.

6552 Section 227. Section **75B-1-201** is enacted to read:

6553 **Part 2. Retirement Trust**

6554 **75B-1-201. Definitions.**

6555 As used in this part:

6556 (1) "Income" means the same as that term is defined in Section [75A-5-101](#).

6557 (2) "Principal" means the same as that term is defined in Section [75A-5-101](#).

6558 (3) "Retirement trust" means a trust:

6559 (a) created by an employer as part of a pension, stock bonus, disability, death benefit,
6560 profit sharing, retirement, or similar plan primarily for the benefit of an employee or the
6561 employee's family, appointee, or beneficiary;

6562 (b) to which contributions are made by the employer or employee; and

6563 (c) that is created for the purpose of distributing principal or income to the employee or
6564 the employee's family, appointee, or beneficiary.

6565 Section 228. Section **75B-1-202**, which is renumbered from Section 22-6-1 is
6566 renumbered and amended to read:

6567 ~~[22-6-1].~~ **75B-1-202. Retirement trusts exempted from rules against**
6568 **perpetuities, accumulations, or suspension of power of alienation.**

- 6600 (a) a creditor or other claimant of the settlor existing when the trust is created; or
6601 (b) a person who subsequently becomes a creditor, including whether or not reduced to
6602 judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed,
6603 undisputed, legal, equitable, secured, or unsecured;
6604 (i) holding or seeking to enforce a judgment entered by a court or other body having
6605 adjudicative authority; or
6606 (ii) with a right to payment.
6607 (2) "Domestic support obligation" means:
6608 (a) a child support judgment or order;
6609 (b) a spousal support judgment or order; or
6610 (c) an unsatisfied claim arising from a property division in a divorce proceeding.
6611 (3) "Insolvent" means:
6612 (a) having generally ceased to pay debts in the ordinary course of business other than as
6613 a result of a bona fide dispute;
6614 (b) being unable to pay debts as they become due; or
6615 (c) being insolvent within the meaning of federal bankruptcy law.
6616 (4) "Paid and delivered" does not include the settlor's use or occupancy of real property
6617 or personal property owned by the trust if the use or occupancy is in accordance with the
6618 trustee's discretionary authority under the trust instrument.
6619 (5) "Personal property" includes intangible and tangible personal property.
6620 (6) "Property" means real property, personal property, and interests in real or personal
6621 property.
6622 (7) "Settlor" means a person who transfers property in trust.
6623 (8) "Transfer" means any form of transfer of property, including gratuitous transfers,
6624 whether by deed, conveyance, or assignment.
6625 (9) "Trust" means the same as that term is defined in Section [75-1-201](#).
6626 Section 231. Section **75B-1-302**, which is renumbered from Section 25-6-502 is
6627 renumbered and amended to read:
6628 **[~~25-6-502~~]. 75B-1-302. Asset protection trust.**
6629 **[~~(1) As used in this section:~~]**
6630 **[~~(a) "Creditor" means:~~]**

- 6631 ~~[(i) a creditor or other claimant of the settlor existing when the trust is created; or]~~
6632 ~~[(ii) a person who subsequently becomes a creditor, including, whether or not reduced~~
6633 ~~to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed,~~
6634 ~~undisputed, legal, equitable, secured, or unsecured;]~~
6635 ~~[(A) one holding or seeking to enforce a judgment entered by a court or other body~~
6636 ~~having adjudicative authority; or]~~
6637 ~~[(B) one with a right to payment.]~~
6638 ~~[(b) "Domestic support obligation" means:]~~
6639 ~~[(i) a child support judgment or order;]~~
6640 ~~[(ii) a spousal support judgment or order; or]~~
6641 ~~[(iii) an unsatisfied claim arising from a property division in a divorce proceeding.]~~
6642 ~~[(c) "Insolvent" means:]~~
6643 ~~[(i) having generally ceased to pay debts in the ordinary course of business other than~~
6644 ~~as a result of a bona fide dispute;]~~
6645 ~~[(ii) being unable to pay debts as they become due; or]~~
6646 ~~[(iii) being insolvent within the meaning of federal bankruptcy law.]~~
6647 ~~[(d) (i) "Property" means real property, personal property, and interests in real or~~
6648 ~~personal property.]~~
6649 ~~[(ii) "Personal property" includes intangible and tangible personal property.]~~
6650 ~~[(e) "Settlor" means a person who transfers property in trust.]~~
6651 ~~[(f) "Transfer" means any form of transfer of property, including gratuitous transfers,~~
6652 ~~whether by deed, conveyance, or assignment.]~~
6653 ~~[(g) "Trust" has the same meaning as in Section [75-1-201](#).]~~
6654 ~~[(2) "Paid and delivered" to the settlor, as beneficiary, does not include the settlor's use~~
6655 ~~or occupancy of real property or personal property owned by the trust if the use or occupancy is~~
6656 ~~in accordance with the trustee's discretionary authority under the trust instrument.]~~
6657 ~~[(3)] (1) If the settlor of an irrevocable trust is also a beneficiary of the trust, and if the~~
6658 ~~requirements of Subsection [(5)] (3) are satisfied, a creditor of the settlor may not:~~
6659 (a) satisfy a claim or liability of the settlor in either law or equity out of the settlor's
6660 transfer to the trust or the settlor's beneficial interest in the trust;
6661 (b) force or require the trustee to make a distribution to the settlor, as beneficiary; or

6662 (c) require the trustee to pay any distribution directly to the creditor, or otherwise
6663 attach the distribution before it has been paid or delivered by the trustee to the settlor, as
6664 beneficiary.

6665 ~~[(4)]~~ (2) Notwithstanding Subsection ~~[(3)]~~ (1), nothing in this section:

6666 (a) prohibits a creditor from satisfying a claim or liability from the distribution once it
6667 has been paid or delivered by the trustee to the settlor, as beneficiary; or

6668 (b) nullifies or impairs a security interest that was granted by a settlor or a trustee with
6669 respect to property that is transferred to the trust.

6670 ~~[(5)]~~ (3) (a) In order for Subsection ~~[(3)]~~ (1) to apply, the conditions in this Subsection
6671 ~~[(5)]~~ (3) shall be satisfied.

6672 (b) Where this Subsection ~~[(5)]~~ (3) requires that a provision be included in the trust
6673 instrument, no particular language need be used in the trust instrument if the meaning of the
6674 trust provision otherwise complies with this Subsection ~~[(5)]~~ (3).

6675 ~~[(a)]~~ (c) An agreement or understanding, express or implied, between the settlor and
6676 the trustee that attempts to grant or permit the retention by the settlor of greater rights or
6677 authority than is stated in the trust instrument is void.

6678 ~~[(b)]~~ (d) The trust instrument shall provide that the trust is governed by Utah law and is
6679 established pursuant to this section.

6680 ~~[(c)]~~ (e) The trust instrument shall require that at all times at least one trustee shall be a
6681 Utah resident or Utah trust company, as the term "trust company" is defined in Section 7-5-1.

6682 ~~[(d)]~~ (f) (i) The trust instrument shall provide that neither the interest of the settlor, as
6683 beneficiary, nor the income or principal of the trust may be voluntarily or involuntarily
6684 transferred by the settlor, as beneficiary.

6685 (ii) The provision shall be considered to be a restriction on the transfer of the settlor's
6686 beneficial interest in the trust that is enforceable under applicable nonbankruptcy law within
6687 the meaning of 11 U.S.C. Sec. 541(c)(2).

6688 ~~[(e)]~~ (g) The settlor may not have the ability under the trust instrument, without the
6689 consent of a person who has a substantial beneficial interest in the trust, which interest would
6690 be adversely affected by the exercise of the power held by the settlor:

6691 (i) to revoke, amend, or terminate all or any part of the trust; or

6692 (ii) to withdraw any property from the trust, except that the settlor, without the

6693 approval or consent of any person, may be given the power, under the trust agreement, to
6694 substitute assets of substantially equivalent value.

6695 ~~[(f)]~~ (h) The trust instrument may not provide for any mandatory distributions of either
6696 income or principal to the settlor, as beneficiary, except as provided in Subsection ~~[(7)]~~
6697 ~~(5)~~(g).

6698 ~~[(g)]~~ (i) The trust instrument shall require that, at least 30 days before paying and
6699 delivering any distribution to the settlor, as beneficiary, the trustee notify in writing every
6700 person who has a domestic support obligation against the settlor.

6701 (ii) The trust instrument shall require that the notice state the date the distribution will
6702 be paid and delivered and the amount of the distribution.

6703 ~~[(h)]~~ (j) At the time that the settlor transfers any assets to the trust, the settlor may not
6704 be in default of making a payment due under a domestic support obligation.

6705 ~~[(i)]~~ (k) A transfer of assets to the trust may not render the settlor insolvent.

6706 ~~[(j)]~~ (l) At the time the settlor transfers any assets to the trust, the settlor may not intend
6707 to hinder, delay, or defraud a known creditor by transferring the assets to the trust. A settlor's
6708 expressed intention to protect trust assets from the settlor's potential future creditors is not
6709 evidence of an intent to hinder, delay, or defraud a known creditor.

6710 ~~[(k)]~~ (m) Assets transferred to the trust may not be derived from unlawful activities.

6711 ~~[(l)]~~ (n) With respect to each transfer of assets to the trust, the settlor shall sign a sworn
6712 affidavit stating that at the time of the transfer of the assets to the trust:

6713 (i) the settlor has full right, title, and authority to transfer the assets to the trust;

6714 (ii) the transfer of the assets to the trust will not render the settlor insolvent;

6715 (iii) the settlor does not intend to hinder, delay, or defraud a known creditor by
6716 transferring the assets to the trust;

6717 (iv) there is no pending or threatened court action against the settlor, except for a court
6718 action identified by the settlor on an attachment to the affidavit;

6719 (v) the settlor is not involved in an administrative proceeding that is reasonably
6720 expected to have a material adverse effect on the financial condition of the settlor, except an
6721 administrative proceeding identified on an attachment to the affidavit;

6722 (vi) at the time of the transfer of the assets to the trust, the settlor is not in default of a
6723 domestic support obligation;

6724 (vii) the settlor does not contemplate filing for relief under the provisions of United
6725 States Code, Title 11, Bankruptcy; and

6726 (viii) the assets being transferred to the trust were not derived from unlawful activities.

6727 ~~[(6)]~~ (4) Failure to satisfy the requirements of Subsection ~~[(5)]~~ (3) shall result in the
6728 consequences described in this Subsection ~~[(6)]~~ (4).

6729 (a) If any requirement of Subsections ~~[(5)(b)]~~ (3)(b) through (g) is not satisfied, none of
6730 the property held in the trust will at any time have the benefit of the protections described in
6731 Subsection ~~[(3)]~~ (1).

6732 (b) If the trustee does not send the notice required under Subsection ~~[(5)(g)]~~ (3)(g), the
6733 court may authorize any person with a domestic support obligation against the settlor to whom
6734 notice was not sent to attach the distribution or future distributions, but the person may not:

6735 (i) satisfy a claim or liability in either law or equity out of the settlor's transfer to the
6736 trust or the settlor's beneficial interest in the trust; or

6737 (ii) force or require the trustee to make a distribution to the settlor, as beneficiary.

6738 (c) If any requirement described in Subsections ~~[(5)(i)]~~ (3)(i) through (l) is not
6739 satisfied, the property transferred to the trust that does not satisfy the requirement may not have
6740 the benefit of the protections described in Subsection ~~[(3)]~~ (1).

6741 (d) If the requirement described in Subsection ~~[(5)(h)]~~ (3)(h) is not satisfied, the
6742 property transferred to the trust that does not satisfy the requirement does not have the benefit
6743 of the protections described in Subsection ~~[(3)]~~ (1) with respect to any person with a domestic
6744 support obligation.

6745 (e) A creditor of the settlor has the burden of proving that the requirement in
6746 Subsection ~~[(5)(i)]~~ (3)(i) or (j) is not satisfied by clear and convincing evidence.

6747 ~~[(7)]~~ (5) The provisions of Subsection ~~[(3)]~~ (1) may apply to a trust even if:

6748 (a) the settlor serves as a cotrustee or as an advisor to the trustee, except that the settlor
6749 may not determine whether a discretionary distribution will be made;

6750 (b) the settlor participates in a determination regarding whether a discretionary
6751 distribution is made to the settlor by:

6752 (i) requesting a distribution from the trust;

6753 (ii) consulting with the trustees regarding whether a discretionary distribution will be
6754 made;

6755 (iii) exercising a right to consent to or veto the distribution under a power described in
6756 Subsection ~~[(7)(e)]~~ (5)(e);

6757 (iv) signing documentation in the settlor's capacity as a cotrustee that implements a
6758 distribution when the other trustees use discretionary power to independently authorize a
6759 distribution; or

6760 (v) participating in an action authorizing a distribution if the other trustees can
6761 authorize the distribution without the settlor's participation.

6762 (c) the settlor has the authority under the terms of the trust instrument to appoint a
6763 nonsubordinate advisor or a trust protector who can remove and appoint trustees and who can
6764 direct, consent to, or disapprove distributions;

6765 (d) the settlor has the power under the terms of the trust instrument to serve as an
6766 investment director or to appoint an investment director under Section 75-7-906;

6767 (e) the trust instrument gives the settlor the power to consent to or veto a distribution
6768 from the trust;

6769 (f) the trust instrument gives the settlor an inter vivos or a testamentary nongeneral
6770 power of appointment or similar power;

6771 (g) the trust instrument gives the settlor the right to receive the following types of
6772 distributions:

6773 (i) income, principal, or both in the discretion of a person, including a trustee, other
6774 than the settlor;

6775 (ii) principal, subject to an ascertainable standard set forth in the trust;

6776 (iii) income or principal from a charitable remainder annuity trust or charitable
6777 remainder unitrust, as defined in 26 U.S.C. Sec. 664;

6778 (iv) a percentage of the value of the trust each year as determined under the trust
6779 instrument, but not exceeding the amount that may be defined as income under 26 U.S.C. Sec.
6780 643(b);

6781 (v) the transferor's potential or actual use of real property held under a qualified
6782 personal residence trust, or potential or actual possession of a qualified annuity interest, within
6783 the meaning of 26 U.S.C. Sec. 2702 and the accompanying regulations;

6784 (vi) income or principal from a grantor retained annuity trust or grantor retained
6785 unitrust that is allowed under 26 U.S.C. Sec. 2702; and

6786 (vii) income from a trust intended to qualify for the federal estate tax or gift tax marital
6787 deduction under 26 U.S.C. Sec. 2056(b)(7) or 2523(f);

6788 (h) the trust instrument authorizes the settlor to use real or personal property owned by
6789 the trust; or

6790 (i) with respect to the property held in the trust, the settlor may:

6791 (i) give a personal guarantee on a debt or obligation secured by the property;

6792 (ii) make payments, directly or indirectly, on a debt or obligation secured by the
6793 property;

6794 (iii) pay property taxes, casualty and liability insurance premiums, homeowner
6795 association dues, maintenance expenses, or other similar expenses on the property; or

6796 (iv) pay income tax on income attributable to the portion of property held in the trust,
6797 of which the settlor is considered to be the owner under 26 U.S.C. Secs. 671 through 678,
6798 which payments will not be considered additional transfers to the trust for purposes of this
6799 section.

6800 ~~[(8)]~~ (a) If a trust instrument contains the provisions described in Subsections
6801 ~~[(5)(b)]~~ (3)(b) through (g), the transfer restrictions prevent a creditor or other person from
6802 asserting any cause of action or claim for relief against a trustee of the trust or against others
6803 involved in the counseling, drafting, preparation, execution, or funding of the trust for
6804 conspiracy to commit fraudulent conveyance or another voidable transfer, aiding and abetting a
6805 fraudulent conveyance or another voidable transfer, participation in the trust transaction, or
6806 similar cause of action or claim for relief.

6807 (b) For purposes of this ~~[subsection]~~ Subsection (6), counseling, drafting, preparation,
6808 execution, or funding of the trust includes the preparation and funding of a limited partnership,
6809 a limited liability company, or other entity if interests in the entity are subsequently transferred
6810 to the trust.

6811 (c) The creditor and other person prevented from asserting a cause of action or claim
6812 for relief may assert a cause of action against, and are limited to recourse against, only:

6813 ~~[(a)]~~ (i) the trust and the trust assets; and

6814 ~~[(b)]~~ (ii) the settlor, to the extent otherwise allowed in this section.

6815 ~~[(9)]~~ (7) (a) A cause of action or claim for relief under Subsection ~~[(5)(i)]~~ (3)(i) or (j) is
6816 a cause of action or claim for relief under Section [25-6-202](#) or [25-6-203](#).

6817 (b) Except as provided in Subsection ~~[(9)(a)]~~ (7)(a), a cause of action or claim for relief
6818 under this section is not a cause of action or claim for relief under Sections [25-6-101](#) through
6819 [25-6-407](#).

6820 (c) Notwithstanding Section [25-6-305](#), a cause of action or claim for relief regarding a
6821 fraudulent conveyance or other voidable transfer of a settlor's assets under this section is
6822 extinguished unless the action is brought by a creditor of the settlor who was a creditor of the
6823 settlor before the assets in question were transferred to the trust and the action is brought within
6824 the earlier of:

6825 (i) the later of two years after the transfer is made, or one year after the transfer is or
6826 reasonably could have been discovered by the creditor if the creditor:

6827 (A) can demonstrate, by clear and convincing evidence, that the creditor asserted a
6828 specific claim against the settlor before the transfer; or

6829 (B) files another action, other than an action alleging a fraudulent conveyance or other
6830 voidable transfer against the settlor that asserts a claim based on an act or omission of the
6831 settlor that occurred before the transfer, and the action described in Subsection ~~[(9)(c)]~~ (7)(c) is
6832 filed within two years after the transfer; or

6833 (ii) (A) with respect to a creditor known to the settlor, 120 days after the date on which
6834 notice of the transfer is mailed to the creditor, which notice shall state the name and address of
6835 the settlor or the settlor's representative, the name and address of the trustee or the trustee's
6836 representative, and also describe the assets that were transferred, but does not need to state the
6837 value of those assets if the assets are other than cash, and which shall inform the creditor that
6838 the creditor is required to bring the creditor's cause of action or claim for relief against the
6839 settlor and the trustee within 120 days from the mailing of the notice or be forever barred; or

6840 (B) with respect to a creditor not known to the settlor, 120 days after the date on which
6841 notice of the transfer is first published in a newspaper of general circulation in the county in
6842 which the settlor then resides, or is published on a public legal notice website as defined in
6843 Section [45-1-101](#), which notice shall state the name of the settlor or the settlor's representative,
6844 the address of the settlor or the settlor's representative, the name of the trustee or the trustee's
6845 representative, the address of the trustee or the trustee's representative, and also describe the
6846 assets that were transferred, but does not need to state the value of those assets.

6847 ~~[(10)]~~ (8) (a) The notice required in Subsection ~~[(9)(c)(ii)(B)]~~ (7)(c)(ii)(B) shall be

6848 published in accordance with the provisions of Section 45-1-101 for three consecutive weeks
6849 and inform creditors that they are required to bring a cause of action or claim for relief within
6850 120 days from the first publication of the notice or be forever barred.

6851 (b) Failure to give the notice required in Subsection ~~[(9)(c)(ii)]~~ (7)(c)(ii) to a creditor
6852 does not prevent the shortening of the limitations period under Subsection ~~[(9)(c)(ii)]~~ (7)(c)(ii)
6853 with respect to another creditor who properly received notice by mail or publication.

6854 ~~[(11)]~~ (9) (a) A trust is subject to this section if it is governed by Utah law, as provided
6855 in Section 75-7-107, and if it otherwise meets the requirements of this section.

6856 (b) A court of this state has exclusive jurisdiction over an action or claim for relief that
6857 is based on a transfer of property to a trust that is the subject of this section.

6858 ~~[(12)]~~ (10) (a) With respect to a trust that is subject to this section, a claim brought by a
6859 creditor of a beneficiary who is not the settlor is subject to Section 75-7-501 et. seq.

6860 (b) With respect to an irrevocable trust that is not subject to this section, a claim
6861 brought by a creditor of a beneficiary who is the settlor is subject to the provisions of
6862 Subsection 75-7-505(2).

6863 ~~[(13)]~~ (11) If a provision in this section conflicts with a provision in Sections 25-6-101
6864 through 25-6-407, the provision of this section shall supersede the conflicting provision in
6865 Sections 25-6-101 through 25-6-407.

6866 ~~[(14)]~~ (12) Nothing in this section alters rights vested or created under this section
6867 before May 14, 2019.

6868 Section 232. Section 76-5-111 is amended to read:

6869 **76-5-111. Abuse of a vulnerable adult -- Penalties.**

6870 (1) (a) As used in this section:

6871 (i) "Abandonment" means a knowing or intentional action or inaction, including
6872 desertion, by a person acting as a caretaker for a vulnerable adult that leaves the vulnerable
6873 adult without the means or ability to obtain necessary food, clothing, shelter, or medical or
6874 other health care.

6875 (ii) "Abuse" means:

6876 (A) attempting to cause harm, intentionally or knowingly causing harm, or
6877 intentionally or knowingly placing another in fear of imminent harm;

6878 (B) causing physical injury by knowing or intentional acts or omissions;

6879 (C) unreasonable or inappropriate use of physical restraint, medication, or isolation that
6880 causes or is likely to cause harm to a vulnerable adult that is in conflict with a physician's
6881 orders or used as an unauthorized substitute for treatment, unless that conduct furthers the
6882 health and safety of the vulnerable adult; or

6883 (D) deprivation of life-sustaining treatment, except:

6884 (I) as provided in [~~Title 75, Chapter 2a, Advance Health Care Directive Act~~] Title 75A,
6885 Chapter 3, Health Care Decisions; or

6886 (II) when informed consent, as defined in this section, has been obtained.

6887 (iii) "Caretaker" means a person or public institution that is entrusted with or assumes
6888 the responsibility to provide a vulnerable adult with care, food, shelter, clothing, supervision,
6889 medical or other health care, or other necessities for pecuniary gain, by contract, or as a result
6890 of friendship, or in a position of trust and confidence with a vulnerable adult, including a
6891 relative, a household member, an attorney-in-fact, a neighbor, a person who is employed or
6892 who provides volunteer work, a court-appointed or voluntary guardian, or a person who
6893 contracts or is under court order to provide care.

6894 (iv) (A) "Dependent adult" means an individual 18 years old or older, who has a
6895 physical or mental impairment that restricts the individual's ability to carry out normal
6896 activities or to protect the individual's rights.

6897 (B) "Dependent adult" includes an individual who has physical or developmental
6898 disabilities or whose physical or mental capacity has substantially diminished because of age.

6899 (v) "Elder adult" means an individual 65 years old or older.

6900 (vi) "Exploitation" means an offense described in Section [76-5-111.3](#), [76-5-111.4](#), or
6901 [76-5b-202](#).

6902 (vii) "Harm" means pain, mental anguish, emotional distress, hurt, physical or
6903 psychological damage, physical injury, suffering, or distress inflicted knowingly or
6904 intentionally.

6905 (viii) "Informed consent" means:

6906 (A) a written expression by the individual or authorized by the individual, stating that
6907 the individual fully understands the potential risks and benefits of the withdrawal of food,
6908 water, medication, medical services, shelter, cooling, heating, or other services necessary to
6909 maintain minimum physical or mental health, and that the individual desires that the services

6910 be withdrawn, except that a written expression is valid only if the individual is of sound mind
6911 when the consent is given, and the consent is witnessed by at least two individuals who do not
6912 benefit from the withdrawal of services; or

6913 (B) consent to withdraw food, water, medication, medical services, shelter, cooling,
6914 heating, or other services necessary to maintain minimum physical or mental health, as
6915 permitted by court order.

6916 (ix) (A) "Isolation" means knowingly or intentionally preventing a vulnerable adult
6917 from having contact with another person, unless the restriction of personal rights is authorized
6918 by court order, by:

6919 (I) preventing the vulnerable adult from communicating, visiting, interacting, or
6920 initiating interaction with others, including receiving or inviting visitors, mail, or telephone
6921 calls, contrary to the express wishes of the vulnerable adult, or communicating to a visitor that
6922 the vulnerable adult is not present or does not want to meet with or talk to the visitor, knowing
6923 that communication to be false;

6924 (II) physically restraining the vulnerable adult in order to prevent the vulnerable adult
6925 from meeting with a visitor; or

6926 (III) making false or misleading statements to the vulnerable adult in order to induce
6927 the vulnerable adult to refuse to receive communication from visitors or other family members.

6928 (B) "Isolation" does not include an act:

6929 (I) intended in good faith to protect the physical or mental welfare of the vulnerable
6930 adult; or

6931 (II) performed pursuant to the treatment plan or instructions of a physician or other
6932 professional advisor of the vulnerable adult.

6933 (x) "Neglect" means:

6934 (A) failure of a caretaker to provide nutrition, clothing, shelter, supervision, personal
6935 care, or dental or other health care, or failure to provide protection from health and safety
6936 hazards or maltreatment;

6937 (B) failure of a caretaker to provide care to a vulnerable adult in a timely manner and
6938 with the degree of care that a reasonable person in a like position would exercise;

6939 (C) a pattern of conduct by a caretaker, without the vulnerable adult's informed
6940 consent, resulting in deprivation of food, water, medication, health care, shelter, cooling,

6941 heating, or other services necessary to maintain the vulnerable adult's well being;

6942 (D) intentional failure by a caretaker to carry out a prescribed treatment plan that
6943 results or could result in physical injury or physical harm; or

6944 (E) abandonment by a caretaker.

6945 (xi) (A) "Physical injury" includes damage to any bodily tissue caused by
6946 nontherapeutic conduct, to the extent that the tissue must undergo a healing process in order to
6947 be restored to a sound and healthy condition, or damage to any bodily tissue to the extent that
6948 the tissue cannot be restored to a sound and healthy condition.

6949 (B) "Physical injury" includes skin bruising, a dislocation, physical pain, illness,
6950 impairment of physical function, a pressure sore, bleeding, malnutrition, dehydration, a burn, a
6951 bone fracture, a subdural hematoma, soft tissue swelling, injury to any internal organ, or any
6952 other physical condition that imperils the health or welfare of the vulnerable adult and is not a
6953 serious physical injury as defined in this section.

6954 (xii) "Position of trust and confidence" means the position of a person who:

6955 (A) is a parent, spouse, adult child, or other relative of a vulnerable adult;

6956 (B) is a joint tenant or tenant in common with a vulnerable adult;

6957 (C) has a legal or fiduciary relationship with a vulnerable adult, including a
6958 court-appointed or voluntary guardian, trustee, attorney, attorney-in-fact, or conservator; or

6959 (D) is a caretaker of a vulnerable adult.

6960 (xiii) "Serious physical injury" means any physical injury or set of physical injuries
6961 that:

6962 (A) seriously impairs a vulnerable adult's health;

6963 (B) was caused by use of a dangerous weapon;

6964 (C) involves physical torture or causes serious emotional harm to a vulnerable adult; or

6965 (D) creates a reasonable risk of death.

6966 (xiv) "Vulnerable adult" means an elder adult, or a dependent adult who has a mental
6967 or physical impairment which substantially affects that individual's ability to:

6968 (A) provide personal protection;

6969 (B) provide necessities such as food, shelter, clothing, or medical or other health care;

6970 (C) obtain services necessary for health, safety, or welfare;

6971 (D) carry out the activities of daily living;

6972 (E) manage the adult's own resources; or

6973 (F) comprehend the nature and consequences of remaining in a situation of abuse,
6974 neglect, or exploitation.

6975 (b) Terms defined in Section 76-1-101.5 apply to this section.

6976 (2) An actor, including a caretaker, commits abuse of a vulnerable adult if the actor,
6977 under circumstances other than those likely to produce death or serious physical injury:

6978 (a) causes a vulnerable adult to suffer harm, abuse, or neglect;

6979 (b) having the care or custody of a vulnerable adult, causes or permits that vulnerable
6980 adult's person or health to be injured, abused, or neglected; or

6981 (c) causes or permits a vulnerable adult to be placed in a situation in which the
6982 vulnerable adult's person or health is endangered.

6983 (3) (a) A violation of Subsection (2):

6984 (i) is a class A misdemeanor if done intentionally or knowingly;

6985 (ii) is a class B misdemeanor if done recklessly; or

6986 (iii) is a class C misdemeanor if done with criminal negligence.

6987 (b) Notwithstanding Subsection (3)(a), a violation of Subsection (2) that is based on
6988 isolation of a vulnerable adult is a third degree felony.

6989 (4) (a) It does not constitute a defense to a prosecution for a violation of this section
6990 that the actor did not know the age of the vulnerable adult.

6991 (b) An adult is not considered abused, neglected, or a vulnerable adult for the reason
6992 that the adult has chosen to rely solely upon religious, nonmedical forms of healing in lieu of
6993 medical care.

6994 (5) If an actor, including a caretaker, violates this section by willfully isolating a
6995 vulnerable adult, in addition to the penalties under Subsection (3), the court may require that
6996 the actor:

6997 (a) undergo appropriate counseling as a condition of the sentence; and

6998 (b) pay for the costs of the ordered counseling.

6999 Section 233. Section 76-5-205 is amended to read:

7000 **76-5-205. Manslaughter -- Penalties.**

7001 (1) (a) As used in this section:

7002 (i) (A) "Aid" means the act of providing the physical means.

7003 (B) "Aid" does not include the withholding or withdrawal of life sustaining treatment
7004 procedures to the extent allowed under [~~Title 75, Chapter 2a, Advance Health Care Directive~~
7005 ~~Act~~] Title 75A, Chapter 3, Health Care Decisions, or any other laws of this state.

7006 (ii) "Practitioner" means an individual currently licensed, registered, or otherwise
7007 authorized by law to administer, dispense, distribute, or prescribe medications or procedures in
7008 the course of professional practice.

7009 (iii) "Provides" means to administer, prescribe, distribute, or dispense.

7010 (b) Terms defined in Section 76-1-101.5 apply to this section.

7011 (2) Except as provided in Subsection (5), an actor commits manslaughter if the actor:

7012 (a) recklessly causes the death of another individual;

7013 (b) intentionally, and with knowledge that another individual intends to commit suicide
7014 or attempt to commit suicide, aids the individual to commit suicide; or

7015 (c) commits a homicide which would be murder, but the offense is reduced in
7016 accordance with Subsection 76-5-203(4).

7017 (3) A violation of Subsection (2) is a felony of the second degree.

7018 (4) (a) In addition to the penalty described under this section or any other section, a
7019 defendant who is convicted of violating this section shall have the defendant's driver license
7020 revoked under Section 53-3-220 if the death of another individual results from driving a motor
7021 vehicle.

7022 (b) The court shall forward the report of the conviction resulting from driving a motor
7023 vehicle to the Driver License Division in accordance with Section 53-3-218.

7024 (5) (a) A practitioner does not violate Subsection (2)(b) if the practitioner provides
7025 medication or a procedure to treat an individual's illness or relieve an individual's pain or
7026 discomfort, regardless of whether the medication or procedure may hasten or increase the risk
7027 of death to the individual to whom the practitioner provides the medication or procedure.

7028 (b) Notwithstanding Subsection (5)(a), a practitioner violates Subsection (2)(b) if the
7029 practitioner intentionally and knowingly provides the medication or procedure to aid the
7030 individual to commit suicide or attempt to commit suicide.

7031 Section 234. Section 76-6-513 is amended to read:

7032 **76-6-513. Unlawful dealing of property by a fiduciary.**

7033 (1) (a) As used in this section:

7034 (i) "Fiduciary" means the same as that term is defined in Section ~~[22-1-1]~~ [75A-1-201](#).

7035 (ii) "Financial institution" means "depository institution" and "trust company" as
7036 defined in Section [7-1-103](#).

7037 (iii) "Governmental entity" is as defined in Section [63G-7-102](#).

7038 (iv) "Person" does not include a financial institution whose fiduciary functions are
7039 supervised by the Department of Financial Institutions or a federal regulatory agency.

7040 (v) "Property" means the same as that term is defined in Section [76-6-401](#).

7041 (b) Terms defined in Section [76-1-101.5](#) apply to this section.

7042 (2) An actor commits unlawfully dealing with property by a fiduciary if the actor:

7043 (a) deals with property:

7044 (i) that has been entrusted to the actor as a fiduciary, or property of a governmental
7045 entity, public money, or of a financial institution; and

7046 (ii) in a manner which:

7047 (A) the actor knows is a violation of the actor's duty; and

7048 (B) involves substantial risk of loss or detriment to the property owner or to a person
7049 for whose benefit the property was entrusted; or

7050 (b) acting as a fiduciary pledges:

7051 (i) as collateral for a personal loan, or as collateral for the benefit of some party, other
7052 than the owner or the person for whose benefit the property was entrusted, the property that has
7053 been entrusted to the fiduciary; and

7054 (ii) without permission of the owner of the property or some other authorized person.

7055 (3) (a) A violation of Subsection (2)(a) is:

7056 (i) a second degree felony if the:

7057 (A) value of the property is or exceeds \$5,000; or

7058 (B) property is stolen from the person of another;

7059 (ii) a third degree felony if:

7060 (A) the value of the property is or exceeds \$1,500 but is less than \$5,000;

7061 (B) the value of the property is or exceeds \$500 and the actor has been twice before

7062 convicted of any of the following offenses, if each prior offense was committed within 10 years

7063 before the date of the current conviction or the date of the offense upon which the current

7064 conviction is based and at least one of those convictions is for a class A misdemeanor:

- 7065 (I) any theft, any robbery, or any burglary with intent to commit theft;
- 7066 (II) any offense under Part 5, Fraud; or
- 7067 (III) any attempt to commit any offense under Subsection (3)(a)(ii)(B)(I) or (II);
- 7068 (C) the value of property is or exceeds \$500 but is less than \$1,500; or
- 7069 (D) the actor has been previously convicted of a felony violation of any of the offenses
- 7070 listed in Subsections (3)(a)(ii)(B)(I) through (3)(a)(ii)(B)(III), if the prior offense was
- 7071 committed within 10 years before the date of the current conviction or the date of the offense
- 7072 upon which the current conviction is based;
- 7073 (iii) a class A misdemeanor if:
- 7074 (A) the value of the property stolen is or exceeds \$500 but is less than \$1,500; or
- 7075 (B) the actor has been twice before convicted of any of the offenses listed in
- 7076 Subsections (3)(a)(ii)(B)(I) through (3)(a)(ii)(B)(III), if each prior offense was committed
- 7077 within 10 years before the date of the current conviction or the date of the offense upon which
- 7078 the current conviction is based; or
- 7079 (iv) a class B misdemeanor if the value of the property stolen is less than \$500 and the
- 7080 theft is not an offense under Subsection (3)(a)(iii)(B).
- 7081 (b) A violation of Subsection (2)(b) is:
- 7082 (i) a second degree felony if the value of the property wrongfully pledged is or exceeds
- 7083 \$5,000;
- 7084 (ii) a third degree felony if the value of the property wrongfully pledged is or exceeds
- 7085 \$1,500 but is less than \$5,000;
- 7086 (iii) a class A misdemeanor if the value of the property is or exceeds \$500, but is less
- 7087 than \$1,500 or the actor has been twice before convicted of theft, robbery, burglary with intent
- 7088 to commit theft, or unlawful dealing with property by a fiduciary; or
- 7089 (iv) a class B misdemeanor if the value of the property is less than \$500.
- 7090 (4) This section may not be construed to impose criminal or civil liability on any law
- 7091 enforcement officer acting within the scope of a criminal investigation.
- 7092 (5) The forfeiture of property under this section, including any seizure and disposition
- 7093 of the property and any related judicial or administrative proceeding, shall be conducted in
- 7094 accordance with Title 77, Chapter 11a, Seizure of Property and Contraband, through Chapter
- 7095 11c, Retention of Evidence.

- 7096 Section 235. **Repealer.**
- 7097 This bill repeals:
- 7098 Section **22-3-101, Title.**
- 7099 Section **22-5-1, Title.**
- 7100 Section **25-6-501, Title.**
- 7101 Section **75-2a-101, Title.**
- 7102 Section **75-5a-101, Short title.**
- 7103 Section **75-9-101, Title.**
- 7104 Section **75-10-101, Title.**
- 7105 Section **75-11-101, Title.**
- 7106 Section 236. **Effective date.**
- 7107 This bill takes effect on May 1, 2024.