

SENATE BILL No. 107

By Committee on Judiciary

1-28

1 AN ACT enacting the uniform fiduciary income and principal act;
2 repealing the uniform principal and income act (1997); amending
3 K.S.A. 2020 Supp. 58a-103 and repealing the existing section; also
4 repealing K.S.A. 58-9-101, 58-9-102, 58-9-103, 58-9-104, 58-9-201,
5 58-9-202, 58-9-301, 58-9-302, 58-9-303, 58-9-401, 58-9-402, 58-9-
6 403, 58-9-404, 58-9-405, 58-9-406, 58-9-407, 58-9-408, 58-9-410, 58-
7 9-411, 58-9-412, 58-9-413, 58-9-414, 58-9-415, 58-9-501, 58-9-502,
8 58-9-503, 58-9-504, 58-9-506, 58-9-601, 58-9-602 and 58-9-603 and
9 K.S.A. 2020 Supp. 58-9-105, 58-9-106, 58-9-409, 58-9-505 and 58-9-
10 606.

11

12 *Be it enacted by the Legislature of the State of Kansas:*

13 New Section 1. This act may be cited as the uniform fiduciary income
14 and principal act.

15 New Sec. 2. In this act:

16 (1) "Accounting period" means a calendar year, unless a fiduciary
17 selects another period of 12 calendar months or approximately 12 calendar
18 months. "Accounting period" includes a part of a calendar year or another
19 period of 12 calendar months or approximately 12 calendar months, which
20 begins when an income interest begins or ends when an income interest
21 ends.

22 (2) "Asset-backed security" means a security that is serviced
23 primarily by the cash flows of a discrete pool of fixed or revolving
24 receivables or other financial assets that by their terms convert into cash
25 within a finite time. "Asset-backed security" includes rights or other assets
26 that ensure the servicing or timely distribution of proceeds to the holder of
27 the asset-backed security, but does not include an asset to which section
28 17, 25 or 30, and amendments thereto, applies.

29 (3) "Beneficiary" includes:

30 (A) For a trust:

31 (i) A current beneficiary, including a current income beneficiary and a
32 beneficiary that may receive only principal;

33 (ii) a remainder beneficiary; and

34 (iii) any other successor beneficiary;

35 (B) for an estate, an heir, legatee and devisee; and

36 (C) for a life estate or term interest, a person that holds a life estate,

1 term interest or remainder or other interest following a life estate or term
2 interest.

3 (4) "Court" means the district court.

4 (5) "Current income beneficiary" means a beneficiary to which a
5 fiduciary may distribute net income, whether or not the fiduciary also may
6 distribute principal to the beneficiary.

7 (6) "Distribution" means a payment or transfer by a fiduciary to a
8 beneficiary in the beneficiary's capacity as a beneficiary, made under the
9 terms of the trust, without consideration other than the beneficiary's right
10 to receive the payment or transfer under the terms of the trust. "Distribute,"
11 "distributed" and "distributee" have corresponding meanings.

12 (7) "Estate" means a decedent's estate. "Estate" includes the property
13 of the decedent as the estate is originally constituted and the property of
14 the estate as it exists at any time during administration.

15 (8) "Fiduciary" includes a trustee, person holding a power to direct
16 and presumptively serving as a fiduciary under K.S.A. 58a-808, and
17 amendments thereto, personal representative, life tenant, holder of a term
18 interest and person acting under a delegation from a fiduciary. "Fiduciary"
19 includes a person that holds property for a successor beneficiary whose
20 interest may be affected by an allocation of receipts and expenditures
21 between income and principal. If there are two or more co-fiduciaries,
22 "fiduciary" includes all co-fiduciaries acting under the terms of the trust
23 and applicable law.

24 (9) "Income" means moneys or other property a fiduciary receives as
25 current return from principal. "Income" includes a part of receipts from a
26 sale, exchange or liquidation of a principal asset, to the extent provided in
27 sections 17 through 32, and amendments thereto.

28 (10) "Income interest" means the right of a current income
29 beneficiary to receive all or part of net income, whether the terms of the
30 trust require the net income to be distributed or authorize the net income to
31 be distributed in the fiduciary's discretion. "Income interest" includes the
32 right of a current beneficiary to use property held by a fiduciary.

33 (11) "Independent person" means a person that is not:

34 (A) For a trust:

35 (i) A qualified beneficiary determined under K.S.A. 58a-103(12), and
36 amendments thereto;

37 (ii) a settlor of the trust; or

38 (iii) an individual whose legal obligation to support a beneficiary may
39 be satisfied by a distribution from the trust;

40 (B) for an estate, a beneficiary;

41 (C) a spouse, parent, brother, sister or issue of an individual described
42 in paragraph (A) or (B);

43 (D) a corporation, partnership, limited liability company or other

1 entity in which persons described in paragraphs (A) through (C), in the
2 aggregate, have voting control; or

3 (E) an employee of a person described in paragraph (A), (B), (C) or
4 (D).

5 (12) "Mandatory income interest" means the right of a current income
6 beneficiary to receive net income that the terms of the trust require the
7 fiduciary to distribute.

8 (13) "Net income" means the total allocations during an accounting
9 period to income under the terms of a trust and this act minus the
10 disbursements during the period, other than distributions, allocated to
11 income under the terms of the trust and this act. To the extent the trust is a
12 unitrust under sections 8 through 16, and amendments thereto, "net
13 income" means the unitrust amount determined under sections 8 through
14 16, and amendments thereto. "Net income" includes an adjustment from
15 principal to income under section 7, and amendments thereto, but does not
16 include an adjustment from income to principal under section 7, and
17 amendments thereto.

18 (14) "Person" means an individual, estate, trust, business or nonprofit
19 entity, public corporation, government or governmental subdivision,
20 agency or instrumentality thereof or other legal entity.

21 (15) "Personal representative" means an executor, administrator,
22 successor personal representative, special administrator or person that
23 performs substantially the same function with respect to an estate under
24 the law governing the person's status.

25 (16) "Principal" means property held in trust for distribution to,
26 production of income for or use by a current or successor beneficiary.

27 (17) "Record" means information that is inscribed on a tangible
28 medium or that is stored in an electronic or other medium and is
29 retrievable in perceivable form.

30 (18) "Settlor" means a person, including a testator, that creates or
31 contributes property to a trust. If more than one person creates or
32 contributes property to a trust, "settlor" includes each person, to the extent
33 of the trust property attributable to that person's contribution, except to the
34 extent another person has the power to revoke or withdraw that portion.

35 (19) "Special tax benefit" means:

36 (A) Exclusion of a transfer to a trust from gifts described in section
37 2503(b) of the internal revenue code of 1986, 26 U.S.C. § 2503(b),
38 because of the qualification of an income interest in the trust as a present
39 interest in property;

40 (B) status as a qualified subchapter S trust described in section
41 1361(d)(3) of the internal revenue code of 1986, 26 U.S.C. § 1361(d)(3), at
42 a time the trust holds stock of an S corporation described in section
43 1361(a)(1) of the internal revenue code of 1986, 26 U.S.C. § 1361(a)(1);

1 (C) an estate or gift tax marital deduction for a transfer to a trust
2 under section 2056 or 2523 of the internal revenue code of 1986, 26
3 U.S.C. § 2056 or 2523, that depends or depended in whole or in part on the
4 right of the settlor's spouse to receive the net income of the trust;

5 (D) exemption in whole or in part of a trust from the federal
6 generation-skipping transfer tax imposed by section 2601 of the internal
7 revenue code of 1986, 26 U.S.C. § 2601, because the trust was irrevocable
8 on September 25, 1985, if there is any possibility that:

9 (i) A taxable distribution, as defined in section 2612(b) of the internal
10 revenue code of 1986, 26 U.S.C. § 2612(b), could be made from the trust;
11 or

12 (ii) a taxable termination, as defined in section 2612(a) of the internal
13 revenue code of 1986, 26 U.S.C. § 2612(a), could occur with respect to the
14 trust; or

15 (E) an inclusion ratio, as defined in section 2642(a) of the internal
16 revenue code of 1986, 26 U.S.C. § 2642(a), of the trust that is less than
17 one, if there is any possibility that:

18 (i) A taxable distribution, as defined in section 2612(b) of the internal
19 revenue code of 1986, 26 U.S.C. § 2612(b), could be made from the trust;
20 or

21 (ii) a taxable termination, as defined in section 2612(a) of the internal
22 revenue code of 1986, 26 U.S.C. § 2612(a), could occur with respect to the
23 trust.

24 (20) "Successive interest" means the interest of a successor
25 beneficiary.

26 (21) "Successor beneficiary" means a person entitled to receive
27 income or principal or to use property when an income interest or other
28 current interest ends.

29 (22) "Terms of a trust" means:

30 (A) Except as otherwise provided in paragraph (B), the manifestation
31 of the settlor's intent regarding a trust's provisions as:

32 (i) Expressed in the trust instrument; or

33 (ii) established by other evidence that would be admissible in a
34 judicial proceeding;

35 (B) the trust's provisions as established, determined or amended by:

36 (i) A trustee or person holding a power to direct under K.S.A. 58a-
37 808, and amendments thereto, in accordance with applicable law;

38 (ii) court order; or

39 (iii) a nonjudicial settlement agreement under K.S.A. 58a-111, and
40 amendments thereto;

41 (C) for an estate, a will; or

42 (D) for a life estate or term interest, the corresponding manifestation
43 of the rights of the beneficiaries.

1 (23) "Trust":

2 (A) Includes:

3 (i) An express trust, private or charitable, with additions to the trust,
4 wherever and however created; and

5 (ii) a trust created or determined by judgment or decree under which
6 the trust is to be administered in the manner of an express trust; and

7 (B) does not include:

8 (i) A constructive trust;

9 (ii) a resulting trust, conservatorship, guardianship, multi-party
10 account, custodial arrangement for a minor, business trust, voting trust,
11 security arrangement, liquidation trust or trust for the primary purpose of
12 paying debts, dividends, interest, salaries, wages, profits, pensions,
13 retirement benefits or employee benefits of any kind; or

14 (iii) an arrangement under which a person is a nominee, escrowee or
15 agent for another.

16 (24) "Trustee" means a person, other than a personal representative,
17 that owns or holds property for the benefit of a beneficiary. "Trustee"
18 includes an original, additional or successor trustee, whether or not
19 appointed or confirmed by a court.

20 (25) "Will" means any testamentary instrument recognized by
21 applicable law that makes a legally effective disposition of an individual's
22 property, effective at the individual's death. "Will" includes a codicil or
23 other amendment to a testamentary instrument.

24 New Sec. 3. Except as otherwise provided in the terms of a trust or
25 this act, this act applies to:

26 (a) A trust or estate; and

27 (b) a life estate or other term interest in which the interest of one or
28 more persons will be succeeded by the interest of one or more other
29 persons.

30 New Sec. 4. Except as otherwise provided in the terms of a trust or
31 this act, this act applies when the state of Kansas is the principal place of
32 administration of a trust or estate or the situs of property that is not held in
33 a trust or estate and is subject to a life estate or other term interest
34 described in section 3, and amendments thereto. By accepting the
35 trusteeship of a trust having its principal place of administration in this
36 state or by moving the principal place of administration of a trust to this
37 state, the trustee submits to the application of this act to any matter within
38 the scope of this act involving the trust.

39 New Sec. 5. (a) In making an allocation or determination or
40 exercising discretion under this act, a fiduciary shall:

41 (1) Act in good faith, based on what is fair and reasonable to all
42 beneficiaries;

43 (2) administer a trust or estate impartially, except to the extent the

1 terms of the trust manifest an intent that the fiduciary shall or may favor
2 one or more beneficiaries;

3 (3) administer the trust or estate in accordance with the terms of the
4 trust, even if there is a different provision in this act; and

5 (4) administer the trust or estate in accordance with this act, except to
6 the extent the terms of the trust provide otherwise or authorize the
7 fiduciary to determine otherwise.

8 (b) A fiduciary's allocation, determination or exercise of discretion
9 under this act is presumed to be fair and reasonable to all beneficiaries. A
10 fiduciary may exercise a discretionary power of administration given to
11 the fiduciary by the terms of the trust, and an exercise of the power that
12 produces a result different from a result required or permitted by this act
13 does not create an inference that the fiduciary abused the fiduciary's
14 discretion.

15 (c) A fiduciary shall:

16 (1) Add a receipt to principal, to the extent neither the terms of the
17 trust nor this act allocates the receipt between income and principal; and

18 (2) charge a disbursement to principal, to the extent neither the terms
19 of the trust nor this act allocates the disbursement between income and
20 principal.

21 (d) A fiduciary may exercise the power to adjust under section 7, and
22 amendments thereto, convert an income trust to a unitrust under section
23 10(a)(1), and amendments thereto, change the percentage or method used
24 to calculate a unitrust amount under section 10(a)(2), and amendments
25 thereto, or convert a unitrust to an income trust under section 10(a)(3), and
26 amendments thereto, if the fiduciary determines the exercise of the power
27 will assist the fiduciary to administer the trust or estate impartially.

28 (e) Factors the fiduciary must consider in making the determination
29 under subsection (d) include:

30 (1) The terms of the trust;

31 (2) the nature, distribution standards and expected duration of the
32 trust;

33 (3) the effect of the allocation rules, including specific adjustments
34 between income and principal, under sections 17 through 44, and
35 amendments thereto;

36 (4) the desirability of liquidity and regularity of income;

37 (5) the desirability of the preservation and appreciation of principal;

38 (6) the extent to which an asset is used or may be used by a
39 beneficiary;

40 (7) the increase or decrease in the value of principal assets,
41 reasonably determined by the fiduciary;

42 (8) whether and to what extent the terms of the trust give the
43 fiduciary power to accumulate income or invade principal or prohibit the

- 1 fiduciary from accumulating income or invading principal;
2 (9) the extent to which the fiduciary has accumulated income or
3 invaded principal in preceding accounting periods;
4 (10) the effect of current and reasonably expected economic
5 conditions; and
6 (11) the reasonably expected tax consequences of the exercise of the
7 power.

8 New Sec. 6. (a) In this section, "fiduciary decision" means:

9 (1) A fiduciary's allocation between income and principal or other
10 determination regarding income and principal required or authorized by
11 the terms of the trust or this act;

12 (2) the fiduciary's exercise or nonexercise of a discretionary power
13 regarding income and principal granted by the terms of the trust or this act,
14 including the power to adjust under section 7, and amendments thereto,
15 convert an income trust to a unitrust under section 10(a)(1), and
16 amendments thereto, change the percentage or method used to calculate a
17 unitrust amount under section 10(a)(2), and amendments thereto, or
18 convert a unitrust to an income trust under section 10(a)(3), and
19 amendments thereto; or

20 (3) the fiduciary's implementation of a decision described in
21 paragraph (1) or (2).

22 (b) The court may not order a fiduciary to change a fiduciary decision
23 unless the court determines that the fiduciary decision was an abuse of the
24 fiduciary's discretion.

25 (c) If the court determines that a fiduciary decision was an abuse of
26 the fiduciary's discretion, the court may order a remedy authorized by law,
27 including K.S.A. 58a-1001, and amendments thereto. To place the
28 beneficiaries in the positions the beneficiaries would have occupied if
29 there had not been an abuse of the fiduciary's discretion, the court may
30 order:

31 (1) The fiduciary to exercise or refrain from exercising the power to
32 adjust under section 7, and amendments thereto;

33 (2) the fiduciary to exercise or refrain from exercising the power to
34 convert an income trust to a unitrust under section 10(a)(1), and
35 amendments thereto, change the percentage or method used to calculate a
36 unitrust amount under section 10(a)(2), and amendments thereto, or
37 convert a unitrust to an income trust under section 10(a)(3), and
38 amendments thereto;

39 (3) the fiduciary to distribute an amount to a beneficiary;

40 (4) a beneficiary to return some or all of a distribution; or

41 (5) the fiduciary to withhold an amount from one or more future
42 distributions to a beneficiary.

43 (d) On petition by a fiduciary for instruction, the court may determine

1 whether a proposed fiduciary decision will result in an abuse of the
2 fiduciary's discretion. If the petition describes the proposed decision,
3 contains sufficient information to inform the beneficiary of the reasons for
4 making the proposed decision and the facts on which the fiduciary relies,
5 and explains how the beneficiary will be affected by the proposed
6 decision, a beneficiary that opposes the proposed decision has the burden
7 to establish that it will result in an abuse of the fiduciary's discretion. If a
8 fiduciary chooses not to seek court instruction about a proposed decision
9 under this subsection, that choice shall not constitute evidence that the
10 fiduciary's decision was an abuse of discretion.

11 New Sec. 7. (a) Except as otherwise provided in the terms of a trust
12 or this section, a fiduciary, in a record, without court approval, may adjust
13 between income and principal if the fiduciary determines the exercise of
14 the power to adjust will assist the fiduciary to administer the trust or estate
15 impartially.

16 (b) This section does not create a duty to exercise or consider the
17 power to adjust under subsection (a) or to inform a beneficiary about the
18 applicability of this section.

19 (c) A fiduciary that in good faith exercises or fails to exercise the
20 power to adjust under subsection (a) is not liable to a person affected by
21 the exercise or failure to exercise.

22 (d) In deciding whether and to what extent to exercise the power to
23 adjust under subsection (a), a fiduciary shall consider all factors the
24 fiduciary considers relevant, including relevant factors in section 5(e), and
25 amendments thereto, and the application of sections 17(i), 24 and 29, and
26 amendments thereto.

27 (e) A fiduciary may not exercise the power under subsection (a) to
28 make an adjustment or under section 24, and amendments thereto, to make
29 a determination that an allocation is insubstantial if:

30 (1) The adjustment or determination would reduce the amount
31 payable to a current income beneficiary from a trust that qualifies for a
32 special tax benefit, except to the extent the adjustment is made to provide
33 for a reasonable apportionment of the total return of the trust between the
34 current income beneficiary and successor beneficiaries;

35 (2) the adjustment or determination would change the amount
36 payable to a beneficiary, as a fixed annuity or a fixed fraction of the value
37 of the trust assets, under the terms of the trust;

38 (3) the adjustment or determination would reduce an amount that is
39 permanently set aside for a charitable purpose under the terms of the trust,
40 unless both income and principal are set aside for the charitable purpose;

41 (4) possessing or exercising the power would cause a person to be
42 treated as the owner of all or part of the trust for federal income tax
43 purposes;

- 1 (5) possessing or exercising the power would cause all or part of the
2 value of the trust assets to be included in the gross estate of an individual
3 for federal estate tax purposes;
- 4 (6) possessing or exercising the power would cause an individual to
5 be treated as making a gift for federal gift tax purposes;
- 6 (7) the fiduciary is not an independent person;
- 7 (8) the trust is irrevocable and provides for income to be paid to the
8 settlor and possessing or exercising the power would cause the adjusted
9 principal or income to be considered an available resource or available
10 income under a public-benefit program; or
- 11 (9) the trust is a unitrust under sections 8 through 16, and
12 amendments thereto.
- 13 (f) If subsection (e)(4), (5), (6) or (7) applies to a fiduciary:
- 14 (1) A co-fiduciary to which subsections (e)(4) through (7) do not
15 apply may exercise the power to adjust, unless the exercise of the power
16 by the remaining co-fiduciary or co-fiduciaries is not permitted by the
17 terms of the trust or law other than this act; or
- 18 (2) if there is no co-fiduciary to which subsections (e)(4) through (7)
19 do not apply, the fiduciary may appoint a co-fiduciary to which
20 subsections (e)(4) through (7) do not apply, which may be a special
21 fiduciary with limited powers, and the appointed co-fiduciary may
22 exercise the power to adjust under subsection (a), unless the appointment
23 of a co-fiduciary or the exercise of the power by a co-fiduciary is not
24 permitted by the terms of the trust or law other than this act.
- 25 (g) A fiduciary may release or delegate to a co-fiduciary the power to
26 adjust under subsection (a) if the fiduciary determines that the fiduciary's
27 possession or exercise of the power will or may:
- 28 (1) Cause a result described in subsection (e)(1) through (6) or (8); or
- 29 (2) deprive the trust of a tax benefit or impose a tax burden not
30 described in subsection (e)(1) through (6).
- 31 (h) A fiduciary's release or delegation to a co-fiduciary under
32 subsection (g) of the power to adjust under subsection (a):
- 33 (1) Must be in a record;
- 34 (2) applies to the entire power, unless the release or delegation
35 provides a limitation, which may be a limitation to the power to adjust:
- 36 (A) From income to principal;
- 37 (B) from principal to income;
- 38 (C) for specified property; or
- 39 (D) in specified circumstances;
- 40 (3) for a delegation, may be modified by a re-delegation under this
41 subsection by the co-fiduciary to which the delegation is made; and
- 42 (4) subject to paragraph (3), is permanent, unless the release or
43 delegation provides a specified period, including a period measured by the

1 life of an individual or the lives of more than one individual.

2 (i) Terms of a trust which deny or limit the power to adjust between
3 income and principal do not affect the application of this section, unless
4 the terms of the trust expressly deny or limit the power to adjust under
5 subsection (a).

6 (j) The exercise of the power to adjust under subsection (a) in any
7 accounting period may apply to the current period, the immediately
8 preceding period, and one or more subsequent periods.

9 (k) A description of the exercise of the power to adjust under
10 subsection (a) must be:

11 (1) Included in a report, if any, sent to beneficiaries under K.S.A.
12 58a-813, and amendments thereto; or

13 (2) communicated at least annually to the qualified beneficiaries
14 determined under K.S.A. 58a-103(12), and amendments thereto, other than
15 the attorney general.

16 New Sec. 8. In sections 8 through 16, and amendments thereto:

17 (a) "Applicable value" means the amount of the net fair market value
18 of a trust taken into account under section 14, and amendments thereto.

19 (b) "Express unitrust" means a trust for which, under the terms of the
20 trust without regard to sections 8 through 16, and amendments thereto,
21 income or net income must or may be calculated as a unitrust amount.

22 (c) "Income trust" means a trust that is not a unitrust.

23 (d) "Net fair market value of a trust" means the fair market value of
24 the assets of the trust, less the noncontingent liabilities of the trust.

25 (e) "Unitrust" means a trust for which net income is a unitrust
26 amount. The term includes an express unitrust.

27 (f) "Unitrust amount" means an amount computed by multiplying a
28 determined value of a trust by a determined percentage. For a unitrust
29 administered under a unitrust policy, the term means the applicable value,
30 multiplied by the unitrust rate.

31 (g) "Unitrust policy" means a policy described in sections 12 through
32 16, and amendments thereto, and adopted under section 10, and
33 amendments thereto.

34 (h) "Unitrust rate" means the rate used to compute the unitrust
35 amount under subsection (f) for a unitrust administered under a unitrust
36 policy.

37 New Sec. 9. (a) Except as otherwise provided in subsection (b),
38 sections 8 through 16, and amendments thereto, apply to:

39 (1) An income trust, unless the terms of the trust expressly prohibit
40 use of sections 8 through 16, and amendments thereto, by a specific
41 reference to sections 8 through 16, and amendments thereto, or an explicit
42 expression of intent that net income not be calculated as a unitrust amount;
43 and

1 (2) an express unitrust, except to the extent the terms of the trust
2 explicitly:

3 (A) Prohibit use of sections 8 through 16, and amendments thereto,
4 by a specific reference to sections 8 through 16, and amendments thereto;

5 (B) prohibit conversion to an income trust; or

6 (C) limit changes to the method of calculating the unitrust amount.

7 (b) Sections 8 through 16, and amendments thereto, do not apply to a
8 trust described in section 170(f)(2)(B), 642(c)(5), 664(d), 2702(a)(3)(A)(ii)
9 or (iii) or 2702(b) of the internal revenue code of 1986, 26 U.S.C. § 170(f)
10 (2)(B), 642(c)(5), 664(d), 2702(a)(3)(A)(ii) or (iii) or 2702(b).

11 (c) An income trust to which sections 8 through 16, and amendments
12 thereto, apply under subsection (a)(1) may be converted to a unitrust under
13 sections 8 through 16, and amendments thereto, regardless of the terms of
14 the trust concerning distributions. Conversion to a unitrust under sections 8
15 through 16, and amendments thereto, does not affect other terms of the
16 trust concerning distributions of income or principal.

17 (d) Sections 8 through 16, and amendments thereto, apply to an estate
18 only to the extent a trust is a beneficiary of the estate. To the extent of the
19 trust's interest in the estate, the estate may be administered as a unitrust,
20 the administration of the estate as a unitrust may be discontinued, or the
21 percentage or method used to calculate the unitrust amount may be
22 changed, in the same manner as for a trust under sections 8 through 16,
23 and amendments thereto.

24 (e) Sections 8 through 16, and amendments thereto, do not create a
25 duty to take or consider action under sections 8 through 16, and
26 amendments thereto, or to inform a beneficiary about the applicability of
27 sections 8 through 16, and amendments thereto.

28 (f) A fiduciary that in good faith takes or fails to take an action under
29 sections 8 through 16, and amendments thereto, is not liable to a person
30 affected by the action or inaction.

31 New Sec. 10. (a) A fiduciary, without court approval, by complying
32 with subsections (b) and (f), may:

33 (1) Convert an income trust to a unitrust if the fiduciary adopts in a
34 record a unitrust policy for the trust providing:

35 (A) That in administering the trust the net income of the trust will be
36 a unitrust amount rather than net income determined without regard to
37 sections 8 through 16, and amendments thereto; and

38 (B) the percentage and method used to calculate the unitrust amount;

39 (2) change the percentage or method used to calculate a unitrust
40 amount for a unitrust if the fiduciary adopts in a record a unitrust policy or
41 an amendment or replacement of a unitrust policy providing changes in the
42 percentage or method used to calculate the unitrust amount; or

43 (3) convert a unitrust to an income trust if the fiduciary adopts in a

1 record a determination that, in administering the trust, the net income of
2 the trust will be net income determined without regard to sections 8
3 through 16, and amendments thereto, rather than a unitrust amount.

4 (b) A fiduciary may take an action under subsection (a) if:

5 (1) The fiduciary determines that the action will assist the fiduciary to
6 administer a trust impartially;

7 (2) the fiduciary sends a notice in a record, in the manner required by
8 section 11, and amendments thereto, describing and proposing to take the
9 action;

10 (3) the fiduciary sends a copy of the notice under paragraph (2) to
11 each settlor of the trust which is:

12 (A) If an individual, living; or

13 (B) if not an individual, in existence;

14 (4) at least one member of each class of the qualified beneficiaries
15 determined under K.S.A. 58a-103(12), and amendments thereto, other than
16 the attorney general, receiving the notice under paragraph (2) is:

17 (A) If an individual, legally competent;

18 (B) if not an individual, in existence; or

19 (C) represented in the manner provided in section 11(b), and
20 amendments thereto; and

21 (5) the fiduciary does not receive, by the date specified in the notice
22 under section 11(d)(5), and amendments thereto, an objection in a record
23 to the action proposed under paragraph (2) from a person to which the
24 notice under paragraph (2) is sent.

25 (c) If a fiduciary receives, not later than the date stated in the notice
26 under section 11(d)(5), and amendments thereto, an objection in a record
27 described in section 11(d)(4), and amendments thereto, to a proposed
28 action, the fiduciary or a beneficiary may request the court to have the
29 proposed action taken as proposed, taken with modifications or prevented.
30 A person described in section 11(a), and amendments thereto, may oppose
31 the proposed action in the proceeding under this subsection, whether or not
32 the person:

33 (1) Consented under section 11(c), and amendments thereto; or

34 (2) objected under section 11(d)(4), and amendments thereto.

35 (d) If, after sending a notice under subsection (b)(2), a fiduciary
36 decides not to take the action proposed in the notice, the fiduciary shall
37 notify in a record each person described in section 11(a), and amendments
38 thereto, of the decision not to take the action and the reasons for the
39 decision.

40 (e) If a beneficiary requests in a record that a fiduciary take an action
41 described in subsection (a) and the fiduciary declines to act or does not act
42 within 90 days after receiving the request, the beneficiary may request the
43 court to direct the fiduciary to take the action requested.

1 (f) In deciding whether and how to take an action authorized by
2 subsection (a), or whether and how to respond to a request by a beneficiary
3 under subsection (e), a fiduciary shall consider all factors relevant to the
4 trust and the beneficiaries, including relevant factors in section 5(e), and
5 amendments thereto.

6 (g) A fiduciary may release or delegate the power to convert an
7 income trust to a unitrust under subsection (a)(1), change the percentage or
8 method used to calculate a unitrust amount under subsection (a)(2), or
9 convert a unitrust to an income trust under subsection (a)(3), for a reason
10 described in section 7(g), and amendments thereto, and in the manner
11 described in section 7(h), and amendments thereto.

12 New Sec. 11. (a) A notice required by section 10(b)(2), and
13 amendments thereto, must be sent in a manner authorized under K.S.A.
14 58a-109, and amendments thereto, to:

15 (1) The qualified beneficiaries determined under K.S.A. 58a-103(12),
16 and amendments thereto, other than the attorney general; and

17 (2) each person that is granted a power over the trust by the terms of
18 the trust, to the extent the power is exercisable when the person is not then
19 serving as a trustee:

20 (A) Including a:

21 (i) Power over the investment, management or distribution of trust
22 property or other matters of trust administration; and

23 (ii) power to appoint or remove a trustee or person described in this
24 paragraph; and

25 (B) excluding a:

26 (i) Power of appointment;

27 (ii) power of a beneficiary over the trust, to the extent the exercise or
28 nonexercise of the power affects the beneficial interest of the beneficiary
29 or another beneficiary represented by the beneficiary under K.S.A. 58a-
30 301 through 58a-305, and amendments thereto, with respect to the exercise
31 or nonexercise of the power; and

32 (iii) power over the trust if the terms of the trust provide that the
33 power is held in a nonfiduciary capacity and the power must be held in a
34 nonfiduciary capacity to achieve a tax objective under the internal revenue
35 code of 1986.

36 (b) The representation provisions of K.S.A. 58a-301 through 58a-
37 305, and amendments thereto, apply to notice under this section.

38 (c) A person may consent in a record at any time to action proposed
39 under section 10(b)(2), and amendments thereto. A notice required by
40 section 10(b)(2), and amendments thereto, need not be sent to a person that
41 consents under this subsection.

42 (d) A notice required by section 10(b)(2), and amendments thereto,
43 must include:

1 (1) The action proposed under section 10(b)(2) and amendments
2 thereto;

3 (2) for a conversion of an income trust to a unitrust, a copy of the
4 unitrust policy adopted under section 10(a)(1), and amendments thereto;

5 (3) for a change in the percentage or method used to calculate the
6 unitrust amount, a copy of the unitrust policy or amendment or
7 replacement of the unitrust policy adopted under section 10(a)(2), and
8 amendments thereto;

9 (4) a statement that the person to which the notice is sent may object
10 to the proposed action by stating in a record the basis for the objection and
11 sending or delivering the record to the fiduciary;

12 (5) the date by which an objection under paragraph (4) must be
13 received by the fiduciary, which must be at least 30 days after the date the
14 notice is sent;

15 (6) the date on which the action is proposed to be taken and the date
16 on which the action is proposed to take effect;

17 (7) the name and contact information of the fiduciary; and

18 (8) the name and contact information of a person that may be
19 contacted for additional information.

20 New Sec. 12. (a) In administering a unitrust under sections 8 through
21 16, and amendments thereto, a fiduciary shall follow a unitrust policy
22 adopted under section 10(a)(1) or (2), and amendments thereto, or
23 amended or replaced under section 10(a)(2), and amendments thereto.

24 (b) A unitrust policy must provide:

25 (1) The unitrust rate or the method for determining the unitrust rate
26 under section 13, and amendments thereto;

27 (2) the method for determining the applicable value under section 14,
28 and amendments thereto; and

29 (3) the rules described in sections 13 through 16, and amendments
30 thereto, that apply in the administration of the unitrust, whether the rules
31 are:

32 (A) Mandatory, as provided in sections 14(a) and 15(a), and
33 amendments thereto; or

34 (B) optional, as provided in sections 13, 14(b), 15(b) and 16(a), and
35 amendments thereto, to the extent the fiduciary elects to adopt those rules.

36 New Sec. 13. (a) Except as otherwise provided in section 16(b)(1),
37 and amendments thereto, a unitrust rate may be:

38 (1) A fixed unitrust rate; or

39 (2) a unitrust rate that is determined for each period using:

40 (A) A market index or other published data; or

41 (B) a mathematical blend of market indices or other published data
42 over a stated number of preceding periods.

43 (b) Except as otherwise provided in section 16(b)(1), and

1 amendments thereto, a unitrust policy may provide:

2 (1) A limit on how high the unitrust rate determined under subsection
3 (a)(2) may rise;

4 (2) a limit on how low the unitrust rate determined under subsection
5 (a)(2) may fall;

6 (3) a limit on how much the unitrust rate determined under subsection
7 (a)(2) may increase over the unitrust rate for the preceding period or a
8 mathematical blend of unitrust rates over a stated number of preceding
9 periods;

10 (4) a limit on how much the unitrust rate determined under subsection
11 (a)(2) may decrease below the unitrust rate for the preceding period or a
12 mathematical blend of unitrust rates over a stated number of preceding
13 periods; or

14 (5) a mathematical blend of any of the unitrust rates determined under
15 subsection (a)(2) and paragraphs (1) through (4).

16 New Sec. 14. (a) A unitrust policy must provide the method for
17 determining the fair market value of an asset for the purpose of
18 determining the unitrust amount, including:

19 (1) The frequency of valuing the asset, which need not require a
20 valuation in every period; and

21 (2) the date for valuing the asset in each period in which the asset is
22 valued.

23 (b) Except as otherwise provided in section 16(b)(2), and
24 amendments thereto, a unitrust policy may provide methods for
25 determining the amount of the net fair market value of the trust to take into
26 account in determining the applicable value, including:

27 (1) Obtaining an appraisal of an asset for which fair market value is
28 not readily available;

29 (2) exclusion of specific assets or groups or types of assets;

30 (3) other exceptions or modifications of the treatment of specific
31 assets or groups or types of assets;

32 (4) identification and treatment of cash or property held for
33 distribution;

34 (5) use of:

35 (A) An average of fair market values over a stated number of
36 preceding periods; or

37 (B) another mathematical blend of fair market values over a stated
38 number of preceding periods;

39 (6) a limit on how much the applicable value of all assets, groups of
40 assets, or individual assets may increase over:

41 (A) The corresponding applicable value for the preceding period; or

42 (B) a mathematical blend of applicable values over a stated number
43 of preceding periods;

1 (7) a limit on how much the applicable value of all assets, groups of
2 assets, or individual assets may decrease below:

3 (A) The corresponding applicable value for the preceding period; or

4 (B) a mathematical blend of applicable values over a stated number
5 of preceding periods;

6 (8) the treatment of accrued income and other features of an asset that
7 affect value; and

8 (9) determining the liabilities of the trust, including treatment of
9 liabilities to conform with the treatment of assets under paragraphs (1)
10 through (8).

11 New Sec. 15. (a) A unitrust policy must provide the period used under
12 sections 13 and 14, and amendments thereto. Except as otherwise provided
13 in section 16(b)(3), and amendments thereto, the period may be:

14 (1) A calendar year;

15 (2) a 12-month period other than a calendar year;

16 (3) a calendar quarter;

17 (4) a three-month period other than a calendar quarter; or

18 (5) another period.

19 (b) Except as otherwise provided in section 16(b), and amendments
20 thereto, a unitrust policy may provide standards for:

21 (1) Using fewer preceding periods under section 13(a)(2)(B), (b)(3)
22 or (b)(4), and amendments thereto, if:

23 (A) The trust was not in existence in a preceding period; or

24 (B) market indices or other published data are not available for a
25 preceding period;

26 (2) using fewer preceding periods under section 14(b)(5)(A) or (B),
27 (6)(B) or (7)(B), and amendments thereto, if:

28 (A) The trust was not in existence in a preceding period; or

29 (B) fair market values are not available for a preceding period; and

30 (3) prorating the unitrust amount on a daily basis for a part of a
31 period in which the trust or the administration of the trust as a unitrust or
32 the interest of any beneficiary commences or terminates.

33 New Sec. 16. (a) A unitrust policy may:

34 (1) Provide methods and standards for:

35 (A) Determining the timing of distributions;

36 (B) making distributions in cash or in kind or partly in cash and partly
37 in kind; or

38 (C) correcting an underpayment or overpayment to a beneficiary
39 based on the unitrust amount if there is an error in calculating the unitrust
40 amount;

41 (2) specify sources and the order of sources, including categories of
42 income for federal income tax purposes, from which distributions of a
43 unitrust amount are paid; or

1 (3) provide other standards and rules the fiduciary determines serve
2 the interests of the beneficiaries.

3 (b) If a trust qualifies for a special tax benefit or a fiduciary is not an
4 independent person:

5 (1) The unitrust rate established under section 13, and amendments
6 thereto, may not be less than 3% or more than 5%;

7 (2) the only provisions of section 14 that apply are section 14(a) and
8 (b)(1), (4), (5)(A) and (9), and amendments thereto;

9 (3) the only period that may be used under section 15 is a calendar
10 year under section 15(a)(1), and amendments thereto; and

11 (4) the only other provisions of section 15 that apply are section 15(b)
12 (2)(A) and (3), and amendments thereto.

13 New Sec. 17. (a) In this section:

14 (1) "Capital distribution" means an entity distribution of money
15 which is a:

16 (A) Return of capital; or

17 (B) distribution in total or partial liquidation of the entity.

18 (2) "Entity":

19 (A) Means a corporation, partnership, limited liability company,
20 regulated investment company, real estate investment trust, common trust
21 fund or any other organization or arrangement in which a fiduciary owns
22 or holds an interest, whether or not the entity is a taxpayer for federal
23 income tax purposes; and

24 (B) does not include:

25 (i) A trust or estate to which section 18, and amendments thereto,
26 applies;

27 (ii) a business or other activity to which section 19, and amendments
28 thereto, applies which is not conducted by an entity described in
29 subparagraph (A);

30 (iii) an asset-backed security; or

31 (iv) an instrument or arrangement to which section 32, and
32 amendments thereto, applies.

33 (3) "Entity distribution" means a payment or transfer by an entity
34 made to a person in the person's capacity as an owner or holder of an
35 interest in the entity.

36 (b) In this section, an attribute or action of an entity includes an
37 attribute or action of any other entity in which the entity owns or holds an
38 interest, including an interest owned or held indirectly through another
39 entity.

40 (c) Except as otherwise provided in subsections (d)(2) through (4), a
41 fiduciary shall allocate to income:

42 (1) Money received in an entity distribution; and

43 (2) tangible personal property of nominal value received from the

1 entity.

2 (d) A fiduciary shall allocate to principal:

3 (1) Property received in an entity distribution which is not:

4 (A) Money; or

5 (B) tangible personal property of nominal value;

6 (2) money received in an entity distribution in an exchange for part or
7 all of the fiduciary's interest in the entity, to the extent the entity
8 distribution reduces the fiduciary's interest in the entity relative to the
9 interests of other persons that own or hold interests in the entity;

10 (3) money received in an entity distribution that the fiduciary
11 determines or estimates is a capital distribution; and

12 (4) money received in an entity distribution from an entity that is:

13 (A) A regulated investment company or real estate investment trust if
14 the money received is a capital gain dividend for federal income tax
15 purposes; or

16 (B) treated for federal income tax purposes comparably to the
17 treatment described in subparagraph (A).

18 (e) A fiduciary may determine or estimate that money received in an
19 entity distribution is a capital distribution:

20 (1) By relying without inquiry or investigation on a characterization
21 of the entity distribution provided by or on behalf of the entity, unless the
22 fiduciary:

23 (A) Determines, on the basis of information known to the fiduciary,
24 that the characterization is or may be incorrect; or

25 (B) owns or holds more than 50% of the voting interest in the entity;

26 (2) by determining or estimating, on the basis of information known
27 to the fiduciary or provided to the fiduciary by or on behalf of the entity,
28 that the total amount of money and property received by the fiduciary in
29 the entity distribution or a series of related entity distributions is or will be
30 greater than 20% of the fair market value of the fiduciary's interest in the
31 entity; or

32 (3) if neither paragraph (1) nor (2) applies, by considering the factors
33 in subsection (f) and the information known to the fiduciary or provided to
34 the fiduciary by or on behalf of the entity.

35 (f) In making a determination or estimate under subsection (e)(3), a
36 fiduciary may consider:

37 (1) A characterization of an entity distribution provided by or on
38 behalf of the entity;

39 (2) the amount of money or property received in:

40 (A) The entity distribution; or

41 (B) what the fiduciary determines is or will be a series of related
42 entity distributions;

43 (3) the amount described in paragraph (2) compared to the amount

1 the fiduciary determines or estimates is, during the current or preceding
2 accounting periods:

3 (A) The entity's operating income;

4 (B) the proceeds of the entity's sale or other disposition of:

5 (i) All or part of the business or other activity conducted by the
6 entity;

7 (ii) one or more business assets that are not sold to customers in the
8 ordinary course of the business or other activity conducted by the entity; or

9 (iii) one or more assets other than business assets, unless the entity's
10 primary activity is to invest in assets to realize gain on the disposition of
11 all or some of the assets;

12 (C) if the entity's primary activity is to invest in assets to realize gain
13 on the disposition of all or some of the assets, the gain realized on the
14 disposition;

15 (D) the entity's regular, periodic entity distributions;

16 (E) the amount of money the entity has accumulated;

17 (F) the amount of money the entity has borrowed;

18 (G) the amount of money the entity has received from the sources
19 described in sections 23, 26, 27 and 28, and amendments thereto; and

20 (H) the amount of money the entity has received from a source not
21 otherwise described in this paragraph; and

22 (4) any other factor the fiduciary determines is relevant.

23 (g) If, after applying subsections (c) through (f), a fiduciary
24 determines that a part of an entity distribution is a capital distribution but
25 is in doubt about the amount of the entity distribution which is a capital
26 distribution, the fiduciary shall allocate to principal the amount of the
27 entity distribution which is in doubt.

28 (h) If a fiduciary receives additional information about the application
29 of this section to an entity distribution before the fiduciary has paid part of
30 the entity distribution to a beneficiary, the fiduciary may consider the
31 additional information before making the payment to the beneficiary and
32 may change a decision to make the payment to the beneficiary.

33 (i) If a fiduciary receives additional information about the application
34 of this section to an entity distribution after the fiduciary has paid part of
35 the entity distribution to a beneficiary, the fiduciary is not required to
36 change or recover the payment to the beneficiary but may consider that
37 information in determining whether to exercise the power to adjust under
38 section 7, and amendments thereto.

39 New Sec. 18. A fiduciary shall allocate to income an amount received
40 as a distribution of income, including a unitrust distribution under sections
41 8 through 16, and amendments thereto, from a trust or estate in which the
42 fiduciary has an interest, other than an interest the fiduciary purchased in a
43 trust that is an investment entity, and shall allocate to principal an amount

1 received as a distribution of principal from the trust or estate. If a fiduciary
2 purchases, or receives from a settlor, an interest in a trust that is an
3 investment entity, section 17, 31 or 32, and amendments thereto, applies to
4 a receipt from the trust.

5 New Sec. 19. (a) This section applies to a business or other activity
6 conducted by a fiduciary if the fiduciary determines that it is in the
7 interests of the beneficiaries to account separately for the business or other
8 activity instead of:

9 (1) Accounting for the business or other activity as part of the
10 fiduciary's general accounting records; or

11 (2) conducting the business or other activity through an entity
12 described in section 17(a)(2)(A), and amendments thereto.

13 (b) A fiduciary may account separately under this section for the
14 transactions of a business or other activity, whether or not assets of the
15 business or other activity are segregated from other assets held by the
16 fiduciary.

17 (c) A fiduciary that accounts separately under this section for a
18 business or other activity:

19 (1) May determine:

20 (A) The extent to which the net cash receipts of the business or other
21 activity must be retained for:

22 (i) Working capital;

23 (ii) the acquisition or replacement of fixed assets; and

24 (iii) other reasonably foreseeable needs of the business or other
25 activity; and

26 (B) the extent to which the remaining net cash receipts are accounted
27 for as principal or income in the fiduciary's general accounting records for
28 the trust;

29 (2) may make a determination under paragraph (1) separately and
30 differently from the fiduciary's decisions concerning distributions of
31 income or principal; and

32 (3) shall account for the net amount received from the sale of an asset
33 of the business or other activity, other than a sale in the ordinary course of
34 the business or other activity, as principal in the fiduciary's general
35 accounting records for the trust, to the extent the fiduciary determines that
36 the net amount received is no longer required in the conduct of the
37 business or other activity.

38 (d) Activities for which a fiduciary may account separately under this
39 section include:

40 (1) Retail, manufacturing, service and other traditional business
41 activities;

42 (2) farming;

43 (3) raising and selling livestock and other animals;

- 1 (4) managing rental properties;
- 2 (5) extracting minerals, water and other natural resources;
- 3 (6) growing and cutting timber;
- 4 (7) an activity to which section 30, 31 or 32, and amendments thereto,
- 5 applies; and
- 6 (8) any other business conducted by the fiduciary.

7 New Sec. 20. A fiduciary shall allocate to principal:

- 8 (a) To the extent not allocated to income under this act, an asset
- 9 received from:
 - 10 (1) An individual during the individual's lifetime;
 - 11 (2) an estate;
 - 12 (3) a trust on termination of an income interest; or
 - 13 (4) a payor under a contract naming the fiduciary as beneficiary;
- 14 (b) except as otherwise provided in sections 17 through 32, and
- 15 amendments thereto, money or other property received from the sale,
- 16 exchange, liquidation or change in form of a principal asset;
- 17 (c) an amount recovered from a third party to reimburse the fiduciary
- 18 because of a disbursement described in section 34(a), and amendments
- 19 thereto, or for another reason to the extent not based on loss of income;
- 20 (d) proceeds of property taken by eminent domain, except that
- 21 proceeds awarded for loss of income in an accounting period are income if
- 22 a current income beneficiary had a mandatory income interest during the
- 23 period;
- 24 (e) net income received in an accounting period during which there is
- 25 no beneficiary to which a fiduciary may or must distribute income; and
- 26 (f) other receipts as provided in sections 24 through 32, and
- 27 amendments thereto.

28 New Sec. 21. To the extent a fiduciary does not account for the

29 management of rental property as a business under section 19, and

30 amendments thereto, the fiduciary shall allocate to income an amount

31 received as rent of real or personal property, including an amount received

32 for cancellation or renewal of a lease. An amount received as a refundable

33 deposit, including a security deposit or a deposit that is to be applied as

34 rent for future periods:

- 35 (a) Must be added to principal and held subject to the terms of the
- 36 lease, except as otherwise provided by law other than this act; and
- 37 (b) is not allocated to income or available for distribution to a
- 38 beneficiary until the fiduciary's contractual obligations have been satisfied
- 39 with respect to that amount.

40 New Sec. 22. (a) This section does not apply to an obligation to

41 which section 25, 26, 27, 28, 30, 31 or 32, and amendments thereto,

42 applies.

- 43 (b) A fiduciary shall allocate to income, without provision for

1 amortization of premium, an amount received as interest on an obligation
2 to pay money to the fiduciary, including an amount received as
3 consideration for prepaying principal.

4 (c) A fiduciary shall allocate to principal an amount received from the
5 sale, redemption or other disposition of an obligation to pay money to the
6 fiduciary. A fiduciary shall allocate to income the increment in value of a
7 bond or other obligation for the payment of money bearing no stated
8 interest but payable or redeemable, at maturity or another future time, in
9 an amount that exceeds the amount in consideration of which it was
10 issued.

11 New Sec. 23. (a) This section does not apply to a contract to which
12 section 25, and amendments thereto, applies.

13 (b) Except as otherwise provided in subsection (c), a fiduciary shall
14 allocate to principal the proceeds of a life insurance policy or other
15 contract received by the fiduciary as beneficiary, including a contract that
16 insures against damage to, destruction of or loss of title to an asset. The
17 fiduciary shall allocate dividends on an insurance policy to income to the
18 extent premiums on the policy are paid from income and to principal to the
19 extent premiums on the policy are paid from principal.

20 (c) A fiduciary shall allocate to income proceeds of a contract that
21 insures the fiduciary against loss of:

22 (1) Occupancy or other use by a current income beneficiary;

23 (2) income; or

24 (3) subject to section 19, and amendments thereto, profits from a
25 business.

26 New Sec. 24. (a) If a fiduciary determines that an allocation between
27 income and principal required by section 25, 26, 27, 28 or 31, and
28 amendments thereto, is insubstantial, the fiduciary may allocate the entire
29 amount to principal, unless section 7(e), and amendments thereto, applies
30 to the allocation.

31 (b) A fiduciary may presume an allocation is insubstantial under
32 subsection (a) if:

33 (1) The amount of the allocation would increase or decrease net
34 income in an accounting period, as determined before the allocation, by
35 less than 10%; and

36 (2) the asset producing the receipt to be allocated has a fair market
37 value less than 10% of the total fair market value of the assets owned or
38 held by the fiduciary at the beginning of the accounting period.

39 (c) The power to make a determination under subsection (a) may be:

40 (1) Exercised by a co-fiduciary in the manner described in section
41 7(f), and amendments thereto; or

42 (2) released or delegated for a reason described in section 7(g), and
43 amendments thereto, and in the manner described in section 7(h), and

1 amendments thereto.

2 New Sec. 25. (a) In this section:

3 (1) "Internal income of a separate fund" means the amount
4 determined under subsection (b).

5 (2) "Marital trust" means a trust:

6 (A) Of which the settlor's surviving spouse is the only current income
7 beneficiary and is entitled to a distribution of all the current net income of
8 the trust; and

9 (B) that qualifies for a marital deduction with respect to the settlor's
10 estate under section 2056 of the internal revenue code of 1986, 26 U.S.C. §
11 2056, because:

12 (i) An election to qualify for a marital deduction under section
13 2056(b)(7) of the internal revenue code of 1986, 26 U.S.C. § 2056(b)(7),
14 has been made; or

15 (ii) the trust qualifies for a marital deduction under section 2056(b)(5)
16 of the internal revenue code of 1986, 26 U.S.C. § 2056(b)(5).

17 (3) "Payment" means an amount a fiduciary may receive over a fixed
18 number of years or during the life of one or more individuals because of
19 services rendered or property transferred to the payor in exchange for
20 future amounts the fiduciary may receive. The term includes an amount
21 received in money or property from the payor's general assets or from a
22 separate fund created by the payor.

23 (4) "Separate fund" includes a private or commercial annuity, an
24 individual retirement account, and a pension, profit-sharing, stock-bonus
25 or stock-ownership plan.

26 (b) For each accounting period, the following rules apply to a
27 separate fund:

28 (1) The fiduciary shall determine the internal income of the separate
29 fund as if the separate fund were a trust subject to this act.

30 (2) If the fiduciary cannot determine the internal income of the
31 separate fund under paragraph (1), the internal income of the separate fund
32 is deemed to equal 4% of the value of the separate fund, according to the
33 most recent statement of value preceding the beginning of the accounting
34 period.

35 (3) If the fiduciary cannot determine the value of the separate fund
36 under paragraph (2), the value of the separate fund is deemed to equal the
37 present value of the expected future payments, as determined under section
38 7520 of the internal revenue code of 1986, 26 U.S.C. § 7520, for the
39 month preceding the beginning of the accounting period for which the
40 computation is made.

41 (c) A fiduciary shall allocate a payment received from a separate fund
42 during an accounting period to income, to the extent of the internal income
43 of the separate fund during the period, and the balance to principal.

1 (d) The fiduciary of a marital trust shall:

2 (1) Withdraw from a separate fund the amount the current income
3 beneficiary of the trust requests the fiduciary to withdraw, not greater than
4 the amount by which the internal income of the separate fund during the
5 accounting period exceeds the amount the fiduciary otherwise receives
6 from the separate fund during the period;

7 (2) transfer from principal to income the amount the current income
8 beneficiary requests the fiduciary to transfer, not greater than the amount
9 by which the internal income of the separate fund during the period
10 exceeds the amount the fiduciary receives from the separate fund during
11 the period after the application of paragraph (1); and

12 (3) distribute to the current income beneficiary as income:

13 (A) The amount of the internal income of the separate fund received
14 or withdrawn during the period; and

15 (B) the amount transferred from principal to income under paragraph
16 (2).

17 (e) For a trust, other than a marital trust, of which one or more current
18 income beneficiaries are entitled to a distribution of all the current net
19 income, the fiduciary shall transfer from principal to income the amount
20 by which the internal income of a separate fund during the accounting
21 period exceeds the amount the fiduciary receives from the separate fund
22 during the period.

23 New Sec. 26. (a) In this section, "liquidating asset" means an asset
24 whose value will diminish or terminate because the asset is expected to
25 produce receipts for a limited time. The term includes a leasehold, patent,
26 copyright, royalty right and right to receive payments during a period of
27 more than one year under an arrangement that does not provide for the
28 payment of interest on the unpaid balance.

29 (b) This section does not apply to a receipt subject to section 17, 25,
30 27, 28, 30, 31, 32 or 35, and amendments thereto.

31 (c) A fiduciary shall allocate:

32 (1) To income:

33 (A) A receipt produced by a liquidating asset, to the extent the receipt
34 does not exceed 4% of the value of the asset; or

35 (B) if the fiduciary cannot determine the value of the asset, 10% of
36 the receipt; and

37 (2) to principal, the balance of the receipt.

38 New Sec. 27. (a) To the extent a fiduciary does not account for a
39 receipt from an interest in minerals, water or other natural resources as a
40 business under section 19, and amendments thereto, the fiduciary shall
41 allocate the receipt:

42 (1) To income, to the extent received:

43 (A) As delay rental or annual rent on a lease;

1 (B) as a factor for interest or the equivalent of interest under an
2 agreement creating a production payment; or

3 (C) on account of an interest in renewable water;

4 (2) to principal, if received from a production payment, to the extent
5 paragraph (1)(B) does not apply; or

6 (3) between income and principal equitably, to the extent received:

7 (A) On account of an interest in non-renewable water;

8 (B) as a royalty, shut-in-well payment, take-or-pay payment or bonus;
9 or

10 (C) from a working interest or any other interest not provided for in
11 paragraph (1) or (2) or subparagraph (A) or (B).

12 (b) This section applies to an interest owned or held by a fiduciary
13 whether or not a settlor was extracting minerals, water or other natural
14 resources before the fiduciary owned or held the interest.

15 (c) An allocation of a receipt under subsection (a)(3) is presumed to
16 be equitable if the amount allocated to principal is equal to the amount
17 allowed by the internal revenue code of 1986 as a deduction for depletion
18 of the interest.

19 (d) If a fiduciary owns or holds an interest in minerals, water or other
20 natural resources before July 1, 2021, the fiduciary may allocate receipts
21 from the interest as provided in this section or in the manner used by the
22 fiduciary before July 1, 2021. If the fiduciary acquires an interest in
23 minerals, water or other natural resources on or after July 1, 2021, the
24 fiduciary shall allocate receipts from the interest as provided in this
25 section.

26 New Sec. 28. (a) To the extent a fiduciary does not account for
27 receipts from the sale of timber and related products as a business under
28 section 19, and amendments thereto, the fiduciary shall allocate the net
29 receipts:

30 (1) To income, to the extent the amount of timber cut from the land
31 does not exceed the rate of growth of the timber;

32 (2) to principal, to the extent the amount of timber cut from the land
33 exceeds the rate of growth of the timber or the net receipts are from the
34 sale of standing timber;

35 (3) between income and principal if the net receipts are from the lease
36 of land used for growing and cutting timber or from a contract to cut
37 timber from land, by determining the amount of timber cut from the land
38 under the lease or contract and applying the rules in paragraphs (1) and
39 (2); or

40 (4) to principal, to the extent advance payments, bonuses and other
41 payments are not allocated under paragraph (1), (2) or (3).

42 (b) In determining net receipts to be allocated under subsection (a), a
43 fiduciary shall deduct and transfer to principal a reasonable amount for

1 depletion.

2 (c) This section applies to land owned or held by a fiduciary whether
3 or not a settlor was cutting timber from the land before the fiduciary
4 owned or held the property.

5 (d) If a fiduciary owns or holds an interest in land used for growing
6 and cutting timber before July 1, 2021, the fiduciary may allocate net
7 receipts from the sale of timber and related products as provided in this
8 section or in the manner used by the fiduciary before July 1, 2021. If the
9 fiduciary acquires an interest in land used for growing and cutting timber
10 on or after July 1, 2021, the fiduciary shall allocate net receipts from the
11 sale of timber and related products as provided in this section.

12 New Sec. 29. (a) If a trust received property for which a gift or estate
13 tax marital deduction was allowed and the settlor's spouse holds a
14 mandatory income interest in the trust, the spouse may require the trustee,
15 to the extent the trust assets otherwise do not provide the spouse with
16 sufficient income from or use of the trust assets to qualify for the
17 deduction, to:

18 (1) Make property productive of income;

19 (2) convert property to property productive of income within a
20 reasonable time; or

21 (3) exercise the power to adjust under section 7, and amendments
22 thereto.

23 (b) The trustee may decide which action or combination of actions in
24 subsection (a) to take.

25 New Sec. 30. (a) In this section, "derivative" means a contract,
26 instrument, other arrangement or combination of contracts, instruments or
27 other arrangements, the value, rights and obligations of which are, in
28 whole or in part, dependent on or derived from an underlying tangible or
29 intangible asset, group of tangible or intangible assets, index or occurrence
30 of an event. The term includes stocks, fixed income securities and
31 financial instruments and arrangements based on indices, commodities,
32 interest rates, weather-related events and credit-default events.

33 (b) To the extent a fiduciary does not account for a transaction in
34 derivatives as a business under section 19, and amendments thereto, the
35 fiduciary shall allocate 10% of receipts from the transaction and 10% of
36 disbursements made in connection with the transaction to income and the
37 balance to principal.

38 (c) Subsection (d) applies if:

39 (1) A fiduciary:

40 (A) Grants an option to buy property from a trust, whether or not the
41 trust owns the property when the option is granted;

42 (B) grants an option that permits another person to sell property to the
43 trust; or

1 (C) acquires an option to buy property for the trust or an option to sell
2 an asset owned by the trust; and

3 (2) the fiduciary or other owner of the asset is required to deliver the
4 asset if the option is exercised.

5 (d) If this subsection applies, the fiduciary shall allocate 10% to
6 income and the balance to principal of the following amounts:

7 (1) An amount received for granting the option;

8 (2) an amount paid to acquire the option; and

9 (3) gain or loss realized on the exercise, exchange, settlement, offset,
10 closing or expiration of the option.

11 New Sec. 31. (a) Except as otherwise provided in subsection (b), a
12 fiduciary shall allocate to income a receipt from or related to an asset-
13 backed security, to the extent the payor identifies the payment as being
14 from interest or other current return, and to principal the balance of the
15 receipt.

16 (b) If a fiduciary receives one or more payments in exchange for part
17 or all of the fiduciary's interest in an asset-backed security, including a
18 liquidation or redemption of the fiduciary's interest in the security, the
19 fiduciary shall allocate to income 10% of receipts from the transaction and
20 10% of disbursements made in connection with the transaction, and to
21 principal the balance of the receipts and disbursements.

22 New Sec. 32. A fiduciary shall allocate receipts from or related to a
23 financial instrument or arrangement not otherwise addressed by this act.
24 The allocation must be consistent with sections 30 and 31, and
25 amendments thereto.

26 New Sec. 33. Subject to section 36, and amendments thereto, and
27 except as otherwise provided in section 40(c)(2) or (3), and amendments
28 thereto, a fiduciary shall disburse from income:

29 (a) One-half of:

30 (1) The regular compensation of the fiduciary and any person
31 providing investment advisory, custodial or other services to the fiduciary,
32 to the extent income is sufficient; and

33 (2) an expense for an accounting, judicial or nonjudicial proceeding
34 or other matter that involves both income and successive interests, to the
35 extent income is sufficient;

36 (b) the balance of the disbursements described in subsection (a), to
37 the extent a fiduciary that is an independent person determines that making
38 those disbursements from income would be in the interests of the
39 beneficiaries;

40 (c) another ordinary expense incurred in connection with
41 administration, management or preservation of property and distribution of
42 income, including interest, an ordinary repair, regularly recurring tax
43 assessed against principal and an expense of an accounting, judicial or

1 nonjudicial proceeding or other matter that involves primarily an income
2 interest, to the extent income is sufficient; and

3 (d) a premium on insurance covering loss of a principal asset or
4 income from or use of the asset.

5 New Sec. 34. (a) Subject to section 37, and amendments thereto, and
6 except as otherwise provided in section 40(c)(2), and amendments thereto,
7 a fiduciary shall disburse from principal:

8 (1) The balance of the disbursements described in section 33(a) and
9 (c), and amendments thereto, after application of section 33(b), and
10 amendments thereto;

11 (2) the fiduciary's compensation calculated on principal as a fee for
12 acceptance, distribution or termination;

13 (3) a payment of an expense to prepare for or execute a sale or other
14 disposition of property;

15 (4) a payment on the principal of a trust debt;

16 (5) a payment of an expense of an accounting, judicial or nonjudicial
17 proceeding or other matter that involves primarily principal, including a
18 proceeding to construe the terms of the trust or protect property;

19 (6) a payment of a premium for insurance, including title insurance,
20 not described in section 33(d), and amendments thereto, of which the
21 fiduciary is the owner and beneficiary;

22 (7) a payment of an estate or inheritance tax or other tax imposed
23 because of the death of a decedent, including penalties, apportioned to the
24 trust; and

25 (8) a payment:

26 (A) Related to environmental matters, including:

27 (i) Reclamation;

28 (ii) assessing environmental conditions;

29 (iii) remedying and removing environmental contamination;

30 (iv) monitoring remedial activities and the release of substances;

31 (v) preventing future releases of substances;

32 (vi) collecting amounts from persons liable or potentially liable for
33 the costs of activities described in clauses (i) through (v);

34 (vii) penalties imposed under environmental laws or regulations;

35 (viii) other actions to comply with environmental laws or regulations;

36 (ix) statutory or common law claims by third parties; and

37 (x) defending claims based on environmental matters; and

38 (B) for a premium for insurance for matters described in
39 subparagraph (A).

40 (b) If a principal asset is encumbered with an obligation that requires
41 income from the asset to be paid directly to a creditor, the fiduciary shall
42 transfer from principal to income an amount equal to the income paid to
43 the creditor in reduction of the principal balance of the obligation.

1 New Sec. 35. (a) In this section, "depreciation" means a reduction in
2 value due to wear, tear, decay, corrosion or gradual obsolescence of a
3 tangible asset having a useful life of more than one year.

4 (b) A fiduciary may transfer to principal a reasonable amount of the
5 net cash receipts from a principal asset that is subject to depreciation, but
6 may not transfer any amount for depreciation:

7 (1) Of the part of real property used or available for use by a
8 beneficiary as a residence;

9 (2) of tangible personal property held or made available for the
10 personal use or enjoyment of a beneficiary; or

11 (3) under this section, to the extent the fiduciary accounts:

12 (A) under section 26, and amendments thereto, for the asset; or

13 (B) under section 19, and amendments thereto, for the business or
14 other activity in which the asset is used.

15 (c) An amount transferred to principal under this section need not be
16 separately held.

17 New Sec. 36. (a) If a fiduciary makes or expects to make an income
18 disbursement described in subsection (b), the fiduciary may transfer an
19 appropriate amount from principal to income in one or more accounting
20 periods to reimburse income.

21 (b) To the extent the fiduciary has not been and does not expect to be
22 reimbursed by a third party, income disbursements to which subsection (a)
23 applies include:

24 (1) An amount chargeable to principal but paid from income because
25 principal is illiquid;

26 (2) a disbursement made to prepare property for sale, including
27 improvements and commissions; and

28 (3) a disbursement described in section 34(a), and amendments
29 thereto.

30 (c) If an asset whose ownership gives rise to an income disbursement
31 becomes subject to a successive interest after an income interest ends, the
32 fiduciary may continue to make transfers under subsection (a).

33 New Sec. 37. (a) If a fiduciary makes or expects to make a principal
34 disbursement described in subsection (b), the fiduciary may transfer an
35 appropriate amount from income to principal in one or more accounting
36 periods to reimburse principal or provide a reserve for future principal
37 disbursements.

38 (b) To the extent a fiduciary has not been and does not expect to be
39 reimbursed by a third party, principal disbursements to which subsection
40 (a) applies include:

41 (1) An amount chargeable to income but paid from principal because
42 income is not sufficient;

43 (2) the cost of an improvement to principal, whether a change to an

1 existing asset or the construction of a new asset, including a special
2 assessment;

3 (3) a disbursement made to prepare property for rental, including
4 tenant allowances, leasehold improvements and commissions;

5 (4) a periodic payment on an obligation secured by a principal asset,
6 to the extent the amount transferred from income to principal for
7 depreciation is less than the periodic payment; and

8 (5) a disbursement described in section 34(a), and amendments
9 thereto.

10 (c) If an asset whose ownership gives rise to a principal disbursement
11 becomes subject to a successive interest after an income interest ends, the
12 fiduciary may continue to make transfers under subsection (a).

13 New Sec. 38. (a) A tax required to be paid by a fiduciary which is
14 based on receipts allocated to income must be paid from income.

15 (b) A tax required to be paid by a fiduciary which is based on receipts
16 allocated to principal must be paid from principal, even if the tax is called
17 an income tax by the taxing authority.

18 (c) Subject to subsection (d) and sections 36, 37 and 39, and
19 amendments thereto, a tax required to be paid by a fiduciary on a share of
20 an entity's taxable income in an accounting period must be paid from:

21 (1) Income and principal proportionately to the allocation between
22 income and principal of receipts from the entity in the period; and

23 (2) principal to the extent the tax exceeds the receipts from the entity
24 in the period.

25 (d) After applying subsections (a) through (c), a fiduciary shall adjust
26 income or principal receipts, to the extent the taxes the fiduciary pays are
27 reduced because of a deduction for a payment made to a beneficiary.

28 New Sec. 39. (a) A fiduciary may make an adjustment between
29 income and principal to offset the shifting of economic interests or tax
30 benefits between current income beneficiaries and successor beneficiaries
31 which arises from:

32 (1) An election or decision the fiduciary makes regarding a tax
33 matter, other than a decision to claim an income tax deduction to which
34 subsection (b) applies;

35 (2) an income tax or other tax imposed on the fiduciary or a
36 beneficiary as a result of a transaction involving the fiduciary or a
37 distribution by the fiduciary; or

38 (3) ownership by the fiduciary of an interest in an entity a part of
39 whose taxable income, whether or not distributed, is includable in the
40 taxable income of the fiduciary or a beneficiary.

41 (b) If the amount of an estate tax marital or charitable deduction is
42 reduced because a fiduciary deducts an amount paid from principal for
43 income tax purposes instead of deducting it for estate tax purposes and, as

1 a result, estate taxes paid from principal are increased and income taxes
2 paid by the fiduciary or a beneficiary are decreased, the fiduciary shall
3 charge each beneficiary that benefits from the decrease in income tax to
4 reimburse the principal from which the increase in estate tax is paid. The
5 total reimbursement must equal the increase in the estate tax, to the extent
6 the principal used to pay the increase would have qualified for a marital or
7 charitable deduction but for the payment. The share of the reimbursement
8 for each fiduciary or beneficiary whose income taxes are reduced must be
9 the same as its share of the total decrease in income tax.

10 (c) A fiduciary that charges a beneficiary under subsection (b) may
11 offset the charge by obtaining payment from the beneficiary, withholding
12 an amount from future distributions to the beneficiary, or adopting another
13 method or combination of methods.

14 New Sec. 40. (a) This section applies when:

15 (1) The death of an individual results in the creation of an estate or
16 trust; or

17 (2) an income interest in a trust terminates, whether the trust
18 continues or is distributed.

19 (b) A fiduciary of an estate or trust with an income interest that
20 terminates shall determine, under subsection (g) and sections 17 through
21 39 and 42 through 44, and amendments thereto, the amount of net income
22 and net principal receipts received from property specifically given to a
23 beneficiary. The fiduciary shall distribute the net income and net principal
24 receipts to the beneficiary that is to receive the specific property.

25 (c) A fiduciary shall determine the income and net income of an
26 estate or income interest in a trust which terminates, other than the amount
27 of net income determined under subsection (b), under sections 17 through
28 39 and 42 through 44, and amendments thereto, and by:

29 (1) Including in net income all income from property used or sold to
30 discharge liabilities;

31 (2) paying from income or principal, in the fiduciary's discretion, fees
32 of attorneys, accountants and fiduciaries, court costs and other expenses of
33 administration, and interest on estate and inheritance taxes and other taxes
34 imposed because of the decedent's death, but the fiduciary may pay the
35 expenses from income of property passing to a trust for which the
36 fiduciary claims a federal estate tax marital or charitable deduction only to
37 the extent:

38 (A) The payment of the expenses from income will not cause the
39 reduction or loss of the deduction; or

40 (B) the fiduciary makes an adjustment under section 39(b), and
41 amendments thereto; and

42 (3) paying from principal other disbursements made or incurred in
43 connection with the settlement of the estate or the winding up of an

1 income interest that terminates, including:

2 (A) To the extent authorized by the decedent's will, the terms of the
3 trust or applicable law, debts, funeral expenses, disposition of remains,
4 family allowances, estate and inheritance taxes and other taxes imposed
5 because of the decedent's death; and

6 (B) related penalties that are apportioned, by the decedent's will, the
7 terms of the trust or applicable law, to the estate or income interest that
8 terminates.

9 (d) If a decedent's will, the terms of a trust or applicable law provides
10 for the payment of interest or the equivalent of interest to a beneficiary that
11 receives a pecuniary amount outright, the fiduciary shall make the
12 payment from net income determined under subsection (c) or from
13 principal to the extent net income is insufficient.

14 (e) If a beneficiary is to receive a pecuniary amount outright from a
15 trust after an income interest ends because of an income beneficiary's
16 death, and no payment of interest or the equivalent of interest is provided
17 for by the terms of the trust or applicable law, the fiduciary shall pay the
18 interest or the equivalent of interest to which the beneficiary would be
19 entitled under applicable law if the pecuniary amount were required to be
20 paid under a will.

21 (f) A fiduciary shall distribute net income remaining after payments
22 required by subsections (d) and (e) in the manner described in section 41,
23 and amendments thereto, to all other beneficiaries, including a beneficiary
24 that receives a pecuniary amount in trust, even if the beneficiary holds an
25 unqualified power to withdraw assets from the trust or other presently
26 exercisable general power of appointment over the trust.

27 (g) A fiduciary may not reduce principal or income receipts from
28 property described in subsection (b) because of a payment described in
29 section 33 or 34, and amendments thereto, to the extent the decedent's will,
30 the terms of the trust or applicable law requires the fiduciary to make the
31 payment from assets other than the property or to the extent the fiduciary
32 recovers or expects to recover the payment from a third party. The net
33 income and principal receipts from the property must be determined by
34 including the amount the fiduciary receives or pays regarding the property,
35 whether the amount accrued or became due before, on or after the date of
36 the decedent's death or an income interest's terminating event, and making
37 a reasonable provision for an amount the estate or income interest may
38 become obligated to pay after the property is distributed.

39 New Sec. 41. (a) Except to the extent sections 8 through 16, and
40 amendments thereto, apply for a beneficiary that is a trust, each
41 beneficiary described in section 40(f), and amendments thereto, is entitled
42 to receive a share of the net income equal to the beneficiary's fractional
43 interest in undistributed principal assets, using values as of the distribution

1 date. If a fiduciary makes more than one distribution of assets to
2 beneficiaries to which this section applies, each beneficiary, including a
3 beneficiary that does not receive part of the distribution, is entitled, as of
4 each distribution date, to a share of the net income the fiduciary received
5 after the decedent's death, an income interest's other terminating event or
6 the preceding distribution by the fiduciary.

7 (b) In determining a beneficiary's share of net income under
8 subsection (a), the following rules apply:

9 (1) The beneficiary is entitled to receive a share of the net income
10 equal to the beneficiary's fractional interest in the undistributed principal
11 assets immediately before the distribution date.

12 (2) The beneficiary's fractional interest under paragraph (1) must be
13 calculated:

14 (A) On the aggregate value of the assets as of the distribution date
15 without reducing the value by any unpaid principal obligation; and

16 (B) without regard to:

17 (i) Property specifically given to a beneficiary under the decedent's
18 will or the terms of the trust; and

19 (ii) property required to pay pecuniary amounts not in trust.

20 (3) The distribution date under paragraph (1) may be the date as of
21 which the fiduciary calculates the value of the assets if that date is
22 reasonably near the date on which the assets are distributed.

23 (c) To the extent a fiduciary does not distribute under this section all
24 the collected but undistributed net income to each beneficiary as of a
25 distribution date, the fiduciary shall maintain records showing the interest
26 of each beneficiary in the net income.

27 (d) If this section applies to income from an asset, a fiduciary may
28 apply the rules in this section to net gain or loss realized from the
29 disposition of the asset after the decedent's death, an income interest's
30 terminating event, or the preceding distribution by the fiduciary.

31 New Sec. 42. (a) An income beneficiary is entitled to net income in
32 accordance with the terms of the trust from the date an income interest
33 begins. The income interest begins on the date specified in the terms of the
34 trust or, if no date is specified, on the date an asset becomes subject to:

35 (1) The trust for the current income beneficiary; or

36 (2) a successive interest for a successor beneficiary.

37 (b) An asset becomes subject to a trust under subsection (a)(1):

38 (1) For an asset that is transferred to the trust during the settlor's life,
39 on the date the asset is transferred;

40 (2) for an asset that becomes subject to the trust because of a
41 decedent's death, on the date of the decedent's death, even if there is an
42 intervening period of administration of the decedent's estate; or

43 (3) for an asset that is transferred to a fiduciary by a third party

1 because of a decedent's death, on the date of the decedent's death.

2 (c) An asset becomes subject to a successive interest under subsection
3 (a)(2) on the day after the preceding income interest ends, as determined
4 under subsection (d), even if there is an intervening period of
5 administration to wind up the preceding income interest.

6 (d) An income interest ends on the day before an income beneficiary
7 dies or another terminating event occurs or on the last day of a period
8 during which there is no beneficiary to which a fiduciary may or must
9 distribute income.

10 New Sec. 43. (a) A fiduciary shall allocate an income receipt or
11 disbursement, other than a receipt to which section 40(b), and amendments
12 thereto, applies, to principal if its due date occurs before the date on
13 which:

14 (1) For an estate, the decedent died; or

15 (2) for a trust or successive interest, an income interest begins.

16 (b) If the due date of a periodic income receipt or disbursement
17 occurs on or after the date on which a decedent died or an income interest
18 begins, a fiduciary shall allocate the receipt or disbursement to income.

19 (c) If an income receipt or disbursement is not periodic or has no due
20 date, a fiduciary shall treat the receipt or disbursement under this section
21 as accruing from day to day. The fiduciary shall allocate to principal the
22 portion of the receipt or disbursement accruing before the date on which a
23 decedent died or an income interest begins, and to income the balance.

24 (d) A receipt or disbursement is periodic under subsections (b) and (c)
25 if:

26 (1) The receipt or disbursement must be paid at regular intervals
27 under an obligation to make payments; or

28 (2) the payor customarily makes payments at regular intervals.

29 (e) An item of income or obligation is due under this section on the
30 date the payor is required to make a payment. If a payment date is not
31 stated, there is no due date.

32 (f) Distributions to shareholders or other owners from an entity to
33 which section 17, and amendments thereto, applies are due:

34 (1) On the date fixed by or on behalf of the entity for determining the
35 persons entitled to receive the distribution;

36 (2) if no date is fixed, on the date of the decision by or on behalf of
37 the entity to make the distribution; or

38 (3) if no date is fixed and the fiduciary does not know the date of the
39 decision by or on behalf of the entity to make the distribution, on the date
40 the fiduciary learns of the decision.

41 New Sec. 44. (a) In this section, "undistributed income" means net
42 income received on or before the date on which an income interest ends.
43 The term does not include an item of income or expense which is due or

1 accrued or net income that has been added or is required to be added to
2 principal under the terms of the trust.

3 (b) Except as otherwise provided in subsection (c), when a mandatory
4 income interest of a beneficiary ends, the fiduciary shall pay the
5 beneficiary's share of the undistributed income that is not disposed of
6 under the terms of the trust to the beneficiary or, if the beneficiary does not
7 survive the date the interest ends, to the beneficiary's estate.

8 (c) If a beneficiary has an unqualified power to withdraw more than
9 5% of the value of a trust immediately before an income interest ends:

10 (1) The fiduciary shall allocate to principal the undistributed income
11 from the portion of the trust which may be withdrawn; and

12 (2) subsection (b) applies only to the balance of the undistributed
13 income.

14 (d) When a fiduciary's obligation to pay a fixed annuity or a fixed
15 fraction of the value of assets ends, the fiduciary shall prorate the final
16 payment as required to preserve an income tax, gift tax, estate tax or other
17 tax benefit.

18 New Sec. 45. In applying and construing this uniform act,
19 consideration must be given to the need to promote uniformity of the law
20 with respect to its subject matter among states that enact it.

21 New Sec. 46. This act modifies, limits or supersedes the electronic
22 signatures in global and national commerce act, 15 U.S.C. § 7001 et seq.,
23 but does not modify, limit or supersede section 101(c) of that act, 15
24 U.S.C. § 7001(c), or authorize electronic delivery of any of the notices
25 described in section 103(b) of that act, 15 U.S.C. § 7003(b).

26 New Sec. 47. This act applies to a trust or estate existing or created
27 on or after July 1, 2021, except as otherwise expressly provided in the
28 terms of the trust or this act.

29 New Sec. 48. If any provision of this act or its application to any
30 person or circumstance is held invalid, the invalidity does not affect other
31 provisions or applications of this act which can be given effect without the
32 invalid provision or application, and to this end the provisions of this act
33 are severable.

34 Sec. 49. K.S.A. 2020 Supp. 58a-103 is hereby amended to read as
35 follows: 58a-103. As used in this code:

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

38 (2) "Beneficiary" means a person that:

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

41 (B) in a capacity other than that of trustee, holds a power of
42 appointment over trust property.

43 (3) "Charitable trust" means a trust, or portion of a trust, created for a

1 charitable purpose described in ~~subsection (a)~~ of K.S.A. 58a-405(a), and
2 amendments thereto.

3 (4) "Conservator" means a person appointed by the court pursuant to
4 K.S.A. 59-3001 et seq., and amendments thereto, to administer the estate
5 of a minor or adult individual.

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

8 (6) "Guardian" means a person appointed by the court pursuant to
9 K.S.A. 59-3001 et seq., and amendments thereto, to make decisions
10 regarding the support, care, education, health, and welfare of a minor or
11 adult individual. The term does not include a guardian ad litem.

12 (7) "Interests of the beneficiaries" means the beneficial interests
13 provided in the terms of the trust.

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

16 (9) "Person" means an individual, corporation, business trust, estate,
17 trust, partnership, limited liability company, association, joint venture,
18 government; governmental subdivision, agency, or instrumentality; public
19 corporation, or any other legal or commercial entity.

20 (10) "Power of withdrawal" means a presently exercisable general
21 power of appointment other than a power:

22 (A) Exercisable by a trustee and limited by an ascertainable standard
23 relating to an individual's health, education, support or maintenance within
24 the meaning of section 2041(b)(1)(A) or 2514(c)(1) of the internal revenue
25 code of 1986, as in effect on July 1, 2006; or

26 (B) exercisable by another person only upon consent of the trustee or
27 a person holding an adverse interest.

28 (11) "Property" means anything that may be the subject of ownership,
29 whether real or personal, legal or equitable, or any interest therein.

30 (12) (A) "Qualified beneficiary" means a beneficiary who, as of the
31 date in question, either is eligible to receive mandatory or discretionary
32 distributions of trust income or principal, or would be so eligible if the
33 trust terminated on that date.

34 (B) For the purpose of trustee determining "qualified beneficiaries" of
35 a trust in which a beneficial interest is subject to a power of appointment
36 of any nature, the trustee may conclusively presume such power of
37 appointment has not been exercised unless the trustee has been furnished
38 by the powerholder or the legal representative of the powerholder or the
39 powerholder's estate with the original or a copy of an instrument validly
40 exercising such power of appointment, in which event the qualified
41 beneficiaries shall be subsequently determined by giving due consideration
42 to such exercise unless and until the trustee has been given notification in a
43 similar manner of an instrument which validly revokes or modifies such

1 exercise.

2 (13) "Revocable," as applied to a trust, means revocable by the settlor
3 without the consent of the trustee or a person holding an adverse interest.

4 (14) "Settlor" means a person, including a testator, who creates, or
5 contributes property to, a trust. If more than one person creates or
6 contributes property to a trust, each person is a settlor of the portion of the
7 trust property attributable to that person's contribution except to the extent
8 another person has the power to revoke or withdraw that portion.

9 (15) "Spendthrift provision" means a term of a trust which restrains
10 either voluntary or involuntary transfer of a beneficiary's interest.

11 (16) "State" means a state of the United States, the District of
12 Columbia, Puerto Rico, the United States Virgin Islands, or any territory or
13 insular possession subject to the jurisdiction of the United States. The term
14 includes an Indian tribe or band recognized by federal law or formally
15 acknowledged by a state.

16 (17) "Terms of a trust" means:

17 (A) *Except as otherwise provided in subparagraph (B), the*
18 *manifestation of the settlor's intent regarding a trust's provisions as: (1)*
19 *Expressed in the trust instrument; or ~~as may be~~ (2) established by other*
20 *evidence that would be admissible in a judicial proceeding; or*

21 (B) *the trust's provisions as established, determined, or amended by:*
22 *(1) A trustee or person holding a power to direct under K.S.A. 58a-808,*
23 *and amendments thereto, in accordance with applicable law; (2) court*
24 *order; or (3) a nonjudicial settlement agreement under K.S.A. 58a-111,*
25 *and amendments thereto.*

26 (18) "Trust instrument" means an instrument executed by the settlor
27 that contains terms of the trust, including any amendments thereto.

28 (19) "Trustee" includes an original, additional, and successor trustee,
29 and a cotrustee.

30 Sec. 50. K.S.A. 58-9-101, 58-9-102, 58-9-103, 58-9-104, 58-9-201,
31 58-9-202, 58-9-301, 58-9-302, 58-9-303, 58-9-401, 58-9-402, 58-9-403,
32 58-9-404, 58-9-405, 58-9-406, 58-9-407, 58-9-408, 58-9-410, 58-9-411,
33 58-9-412, 58-9-413, 58-9-414, 58-9-415, 58-9-501, 58-9-502, 58-9-503,
34 58-9-504, 58-9-506, 58-9-601, 58-9-602 and 58-9-603 and K.S.A. 2020
35 Supp. 58-9-105, 58-9-106, 58-9-409, 58-9-505, 58-9-606 and 58a-103 are
36 hereby repealed.

37 Sec. 51. This act shall take effect and be in force from and after its
38 publication in the statute book.