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**BILL REQUEST - CODE REVISER'S OFFICE**

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BILL REQ. #: Z-0159.1/19 ROUGH DRAFT

ATTY/TYPIST: JA:eab

BRIEF DESCRIPTION: Concerning the uniform fiduciary income and principal act.

1 AN ACT Relating to the uniform fiduciary income and principal  
2 act; adding a new chapter to Title 11 RCW; repealing RCW 11.104A.001,  
3 11.104A.005, 11.104A.010, 11.104A.020, 11.104A.030, 11.104A.040,  
4 11.104A.050, 11.104A.060, 11.104A.070, 11.104A.080, 11.104A.090,  
5 11.104A.100, 11.104A.110, 11.104A.120, 11.104A.130, 11.104A.140,  
6 11.104A.150, 11.104A.160, 11.104A.170, 11.104A.180, 11.104A.190,  
7 11.104A.200, 11.104A.210, 11.104A.220, 11.104A.230, 11.104A.240,  
8 11.104A.250, 11.104A.260, 11.104A.270, 11.104A.280, 11.104A.290,  
9 11.104A.300, 11.104A.900, 11.104A.901, 11.104A.904, 11.104A.905,  
10 11.104A.906, and 11.104A.907; and providing an effective date.

11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

12 **ARTICLE 1**  
13 **GENERAL PROVISIONS**

14 NEW SECTION. **Sec. 101.** SHORT TITLE. This chapter may be known  
15 and cited as the uniform fiduciary income and principal act.

16 NEW SECTION. **Sec. 102.** DEFINITIONS. The definitions in this  
17 section apply throughout this chapter unless the context clearly  
18 requires otherwise.

1 (1) "Accounting period" means a calendar year, unless a fiduciary  
2 selects another period of twelve calendar months or approximately  
3 twelve calendar months. The term includes a part of a calendar year  
4 or another period of twelve calendar months or approximately twelve  
5 calendar months which begins when an income interest begins or ends  
6 when an income interest ends.

7 (2) "Asset-backed security" means a security that is serviced  
8 primarily by the cash flows of a discrete pool of fixed or revolving  
9 receivables or other financial assets that by their terms convert  
10 into cash within a finite time. The term includes rights or other  
11 assets that ensure the servicing or timely distribution of proceeds  
12 to the holder of the asset-backed security. The term does not include  
13 an asset to which section 401, 409, or 414 of this act applies.

14 (3) "Beneficiary" includes:

15 (a) For a trust:

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

18 (ii) A remainder beneficiary; and

19 (iii) Any other successor beneficiary;

20 (b) For an estate, an heir, legatee, and devisee; and

21 (c) For a life estate or term interest, a person that holds a  
22 life estate, term interest, or remainder or other interest following  
23 a life estate or term interest.

24 (4) "Court" means the court in this state having jurisdiction  
25 relating to a trust, estate, or life estate or other term interest  
26 described in section 103(2) of this act.

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

30 (6) "Distribution" means a payment or transfer by a fiduciary to  
31 a beneficiary in the beneficiary's capacity as a beneficiary, made  
32 under the terms of the trust, without consideration other than the  
33 beneficiary's right to receive the payment or transfer under the  
34 terms of the trust. "Distribute," "distributed," and "distributee"  
35 have corresponding meanings.

36 (7) "Estate" means a decedent's estate. The term includes the  
37 property of the decedent as the estate is originally constituted and  
38 the property of the estate as it exists at any time during  
39 administration.

1 (8) "Fiduciary" includes a trustee, personal representative, life  
2 tenant, holder of a term interest, and person acting under a  
3 delegation from a fiduciary. The term includes a person that holds  
4 property for a successor beneficiary whose interest may be affected  
5 by an allocation of receipts and expenditures between income and  
6 principal. If there are two or more cofiduciaries, the term includes  
7 all cofiduciaries acting under the terms of the trust and applicable  
8 law.

9 (9) "Income" means money or other property a fiduciary receives  
10 as current return from principal. The term includes a part of  
11 receipts from a sale, exchange, or liquidation of a principal asset,  
12 to the extent provided in article 4 of this chapter.

13 (10) "Income interest" means the right of a current income  
14 beneficiary to receive all or part of net income, whether the terms  
15 of the trust require the net income to be distributed or authorize  
16 the net income to be distributed in the fiduciary's discretion. The  
17 term includes the right of a current beneficiary to use property held  
18 by a fiduciary.

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

20 (a) For a trust:

21 (i) A beneficiary that is a distributee or permissible  
22 distributee of trust income or principal or would be a distributee or  
23 permissible distributee of trust income or principal if either the  
24 trust or the interests of the distributees or permissible  
25 distributees of trust income or principal were terminated, assuming  
26 no power of appointment is exercised;

27 (ii) A settlor of the trust; or

28 (iii) An individual whose legal obligation to support a  
29 beneficiary may be satisfied by a distribution from the trust;

30 (b) For an estate, a beneficiary;

31 (c) A spouse, parent, brother, sister, or issue of an individual  
32 described in (a) or (b) of this subsection;

33 (d) A corporation, partnership, limited liability company, or  
34 other entity in which persons described in (a) through (c) of this  
35 subsection, in the aggregate, have voting control; or

36 (e) An employee of a person described in (a), (b), (c), or (d) of  
37 this subsection.

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

1           (13) "Net income" means the total allocations during an  
2 accounting period to income under the terms of a trust and this  
3 chapter minus the disbursements during the period, other than  
4 distributions, allocated to income under the terms of the trust and  
5 this chapter. To the extent the trust is a unitrust under article 3  
6 of this chapter, the term means the unitrust amount determined under  
7 article 3 of this chapter. The term includes an adjustment from  
8 principal to income under section 203 of this act. The term does not  
9 include an adjustment from income to principal under section 203 of  
10 this act.

11           (14) "Person" means an individual, estate, trust, business or  
12 nonprofit entity, public corporation, government or governmental  
13 subdivision, agency, or instrumentality, or other legal entity.

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

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

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

24           (18) "Settlor" means a person, including a testator, that creates  
25 or contributes property to a trust. If more than one person creates  
26 or contributes property to a trust, the term includes each person, to  
27 the extent of the trust property attributable to that person's  
28 contribution, except to the extent another person has the power to  
29 revoke or withdraw that portion.

30           (19) "Special tax benefit" means:

31           (a) Exclusion of a transfer to a trust from gifts described in 26  
32 U.S.C. Sec. 2503(b) of the federal internal revenue code of 1986, as  
33 amended, as of the effective date of this section, because of the  
34 qualification of an income interest in the trust as a present  
35 interest in property;

36           (b) Status as a qualified subchapter S trust described in 26  
37 U.S.C. Sec. 1361(d)(3) of the federal internal revenue code of 1986,  
38 as amended, as of the effective date of this section, at a time the  
39 trust holds stock of an S corporation described in 26 U.S.C. Sec.

1 1361(a)(1) of the federal internal revenue code of 1986, as amended,  
2 as of the effective date of this section;

3 (c) An estate or gift tax marital deduction for a transfer to a  
4 trust under 26 U.S.C. Sec. 2056 or 2523 of the federal internal  
5 revenue code of 1986, as amended, as of the effective date of this  
6 section, which depends or depended in whole or in part on the right  
7 of the settlor's spouse to receive the net income of the trust;

8 (d) Exemption in whole or in part of a trust from the federal  
9 generation-skipping transfer tax imposed by 26 U.S.C. Sec. 2601 of  
10 the federal internal revenue code of 1986, as amended, as of the  
11 effective date of this section, because the trust was irrevocable on  
12 September 25, 1985, if there is any possibility that:

13 (i) A taxable distribution, as defined in 26 U.S.C. Sec. 2612(b)  
14 of the federal internal revenue code of 1986, as amended, as of the  
15 effective date of this section, could be made from the trust; or

16 (ii) A taxable termination, as defined in 26 U.S.C. Sec. 2612(a)  
17 of the federal internal revenue code of 1986, as amended, as of the  
18 effective date of this section, could occur with respect to the  
19 trust; or

20 (e) An inclusion ratio, as defined in 26 U.S.C. Sec. 2642(a) of  
21 the federal internal revenue code of 1986, as amended, as of the  
22 effective date of this section, of the trust which is less than one,  
23 if there is any possibility that:

24 (i) A taxable distribution, as defined in 26 U.S.C. Sec. 2612(b)  
25 of the federal internal revenue code of 1986, as amended, as of the  
26 effective date of this section, could be made from the trust; or

27 (ii) A taxable termination, as defined in 26 U.S.C. Sec. 2612(a)  
28 of the federal internal revenue code of 1986, as amended, as of the  
29 effective date of this section, could occur with respect to the  
30 trust.

31 (20) "Successive interest" means the interest of a successor  
32 beneficiary.

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

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

37 (a) Except as otherwise provided in (b) of this subsection, the  
38 manifestation of the settlor's intent regarding a trust's provisions  
39 as:

40 (i) Expressed in the trust instrument; or

1 (ii) Established by other evidence that would be admissible in a  
2 judicial proceeding;

3 (b) The trust's provisions as established, determined, or amended  
4 by:

5 (i) A trustee or trust director in accordance with applicable  
6 law;

7 (ii) Court order; or

8 (iii) A nonjudicial settlement agreement under chapter 11.98A  
9 RCW;

10 (c) For an estate, a will; or

11 (d) For a life estate or term interest, the corresponding  
12 manifestation of the rights of the beneficiaries.

13 (23) "Trust":

14 (a) Includes:

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

17 (ii) A trust created or determined by judgment or decree under  
18 which the trust is to be administered in the manner of an express  
19 trust; and

20 (b) Does not include:

21 (i) A constructive trust;

22 (ii) A resulting trust, conservatorship, guardianship, multiparty  
23 account, custodial arrangement for a minor, business trust, voting  
24 trust, security arrangement, liquidation trust, or trust for the  
25 primary purpose of paying debts, dividends, interest, salaries,  
26 wages, profits, pensions, retirement benefits, or employee benefits  
27 of any kind; or

28 (iii) An arrangement under which a person is a nominee, escrowee,  
29 or agent for another.

30 (24) "Trustee" means a person, other than a personal  
31 representative, that owns or holds property for the benefit of a  
32 beneficiary. The term includes an original, additional, or successor  
33 trustee, whether or not appointed or confirmed by a court.

34 (25) "Will" means any testamentary instrument recognized by  
35 applicable law which makes a legally effective disposition of an  
36 individual's property, effective at the individual's death. The term  
37 includes a codicil or other amendment to a testamentary instrument.

38 NEW SECTION. **Sec. 103.** SCOPE. Except as otherwise provided in  
39 the terms of a trust or this chapter, this chapter applies to:

- 1 (1) A trust or estate; and  
2 (2) A life estate or other term interest in which the interest of  
3 one or more persons will be succeeded by the interest of one or more  
4 other persons.

5 NEW SECTION. **Sec. 104.** GOVERNING LAW. Except as otherwise  
6 provided in the terms of a trust or this chapter, this chapter  
7 applies when this state is the principal place of administration of a  
8 trust or estate or the situs of property that is not held in a trust  
9 or estate and is subject to a life estate or other term interest  
10 described in section 103(2) of this act. By accepting the trusteeship  
11 of a trust having its principal place of administration in this state  
12 or by moving the principal place of administration of a trust to this  
13 state, the trustee submits to the application of this chapter to any  
14 matter within the scope of this chapter involving the trust.

15 **ARTICLE 2**

16 **FIDUCIARY DUTIES AND JUDICIAL REVIEW**

17 NEW SECTION. **Sec. 201.** FIDUCIARY DUTIES—GENERAL PRINCIPLES. (1)  
18 In making an allocation or determination or exercising discretion  
19 under this chapter, a fiduciary shall:

20 (a) Act in good faith, based on what is fair and reasonable to  
21 all beneficiaries;

22 (b) Administer a trust or estate impartially, except to the  
23 extent the terms of the trust manifest an intent that the fiduciary  
24 shall or may favor one or more beneficiaries;

25 (c) Administer the trust or estate in accordance with the terms  
26 of the trust, even if there is a different provision in this chapter;  
27 and

28 (d) Administer the trust or estate in accordance with this  
29 chapter, except to the extent the terms of the trust provide  
30 otherwise or authorize the fiduciary to determine otherwise.

31 (2) A fiduciary's allocation, determination, or exercise of  
32 discretion under this chapter is presumed to be fair and reasonable  
33 to all beneficiaries. A fiduciary may exercise a discretionary power  
34 of administration given to the fiduciary by the terms of the trust,  
35 and an exercise of the power which produces a result different from a  
36 result required or permitted by this chapter does not create an  
37 inference that the fiduciary abused the fiduciary's discretion.



1 (3) A fiduciary shall:

2 (a) Add a receipt to principal, to the extent neither the terms  
3 of the trust nor this chapter allocates the receipt between income  
4 and principal; and

5 (b) Charge a disbursement to principal, to the extent neither the  
6 terms of the trust nor this chapter allocates the disbursement  
7 between income and principal.

8 (4) A fiduciary may exercise the power to adjust under section  
9 203 of this act, convert an income trust to a unitrust under section  
10 303(1)(a) of this act, change the percentage or method used to  
11 calculate a unitrust amount under section 303(1)(b) of this act, or  
12 convert a unitrust to an income trust under section 303(1)(c) of this  
13 act, if the fiduciary determines the exercise of the power will  
14 assist the fiduciary to administer the trust or estate impartially.

15 (5) Factors the fiduciary must consider in making the  
16 determination under subsection (4) of this section include:

17 (a) The terms of the trust;

18 (b) The nature, distribution standards, and expected duration of  
19 the trust;

20 (c) The effect of the allocation rules, including specific  
21 adjustments between income and principal, under articles 4 through 7  
22 of this chapter;

23 (d) The desirability of liquidity and regularity of income;

24 (e) The desirability of the preservation and appreciation of  
25 principal;

26 (f) The extent to which an asset is used or may be used by a  
27 beneficiary;

28 (g) The increase or decrease in the value of principal assets,  
29 reasonably determined by the fiduciary;

30 (h) Whether and to what extent the terms of the trust give the  
31 fiduciary power to accumulate income or invade principal or prohibit  
32 the fiduciary from accumulating income or invading principal;

33 (i) The extent to which the fiduciary has accumulated income or  
34 invaded principal in preceding accounting periods;

35 (j) The effect of current and reasonably expected economic  
36 conditions; and

37 (k) The reasonably expected tax consequences of the exercise of  
38 the power.

1           NEW SECTION.           **Sec. 202.**           JUDICIAL REVIEW OF EXERCISE OF  
2 DISCRETIONARY POWER—REQUEST FOR INSTRUCTION. (1) In this section,  
3 "fiduciary decision" means:

4           (a) A fiduciary's allocation between income and principal or  
5 other determination regarding income and principal required or  
6 authorized by the terms of the trust or this chapter;

7           (b) The fiduciary's exercise or nonexercise of a discretionary  
8 power regarding income and principal granted by the terms of the  
9 trust or this chapter, including the power to adjust under section  
10 203 of this act, convert an income trust to a unitrust under section  
11 303(1)(a) of this act, change the percentage or method used to  
12 calculate a unitrust amount under section 303(1)(b) of this act, or  
13 convert a unitrust to an income trust under section 303(1)(c) of this  
14 act; or

15           (c) The fiduciary's implementation of a decision described in (a)  
16 or (b) of this subsection.

17           (2) The court may not order a fiduciary to change a fiduciary  
18 decision unless the court determines that the fiduciary decision was  
19 an abuse of the fiduciary's discretion.

20           (3) If the court determines that a fiduciary decision was an  
21 abuse of the fiduciary's discretion, the court may order a remedy  
22 authorized by law. To place the beneficiaries in the positions the  
23 beneficiaries would have occupied if there had not been an abuse of  
24 the fiduciary's discretion, the court may order:

25           (a) The fiduciary to exercise or refrain from exercising the  
26 power to adjust under section 203 of this act;

27           (b) The fiduciary to exercise or refrain from exercising the  
28 power to convert an income trust to a unitrust under section  
29 303(1)(a) of this act, change the percentage or method used to  
30 calculate a unitrust amount under section 303(1)(b) of this act, or  
31 convert a unitrust to an income trust under section 303(1)(c) of this  
32 act;

33           (c) The fiduciary to distribute an amount to a beneficiary;

34           (d) A beneficiary to return some or all of a distribution; or

35           (e) The fiduciary to withhold an amount from one or more future  
36 distributions to a beneficiary.

37           (4) On petition by a fiduciary for instruction, the court may  
38 determine whether a proposed fiduciary decision will result in an  
39 abuse of the fiduciary's discretion. If the petition describes the  
40 proposed decision, contains sufficient information to inform the

1 beneficiary of the reasons for making the proposed decision and the  
2 facts on which the fiduciary relies, and explains how the beneficiary  
3 will be affected by the proposed decision, a beneficiary that opposes  
4 the proposed decision has the burden to establish that it will result  
5 in an abuse of the fiduciary's discretion.

6 NEW SECTION. **Sec. 203.** FIDUCIARY'S POWER TO ADJUST. (1) Except  
7 as otherwise provided in the terms of a trust or this section, a  
8 fiduciary, in a record, without court approval, may adjust between  
9 income and principal if the fiduciary determines the exercise of the  
10 power to adjust will assist the fiduciary to administer the trust or  
11 estate impartially.

12 (2) This section does not create a duty to exercise or consider  
13 the power to adjust under subsection (1) of this section or to inform  
14 a beneficiary about the applicability of this section.

15 (3) A fiduciary that in good faith exercises or fails to exercise  
16 the power to adjust under subsection (1) of this section is not  
17 liable to a person affected by the exercise or failure to exercise.

18 (4) In deciding whether and to what extent to exercise the power  
19 to adjust under subsection (1) of this section, a fiduciary shall  
20 consider all factors the fiduciary considers relevant, including  
21 relevant factors in section 201(5) of this act and the application of  
22 sections 401(9), 408, and 413 of this act.

23 (5) A fiduciary may not exercise the power under subsection (1)  
24 of this section to make an adjustment or under section 408 of this  
25 act to make a determination that an allocation is insubstantial if:

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

32 (b) The adjustment or determination would change the amount  
33 payable to a beneficiary, as a fixed annuity or a fixed fraction of  
34 the value of the trust assets, under the terms of the trust;

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

1 (d) Possessing or exercising the power would cause a person to be  
2 treated as the owner of all or part of the trust for federal income  
3 tax purposes;

4 (e) Possessing or exercising the power would cause all or part of  
5 the value of the trust assets to be included in the gross estate of  
6 an individual for federal estate tax purposes;

7 (f) Possessing or exercising the power would cause an individual  
8 to be treated as making a gift for federal gift tax purposes;

9 (g) The fiduciary is not an independent person;

10 (h) The trust is irrevocable and provides for income to be paid  
11 to the settlor and possessing or exercising the power would cause the  
12 adjusted principal or income to be considered an available resource  
13 or available income under a public benefit program; or

14 (i) The trust is a unitrust under article 3 of this chapter.

15 (6) If subsection (5)(d), (e), (f), or (g) of this section  
16 applies to a fiduciary:

17 (a) A cofiduciary to which subsection (5)(d) through (g) of this  
18 section does not apply may exercise the power to adjust, unless the  
19 exercise of the power by the remaining cofiduciary or cofiduciaries  
20 is not permitted by the terms of the trust or law other than this  
21 chapter; or

22 (b) If there is no cofiduciary to which subsection (5)(d) through  
23 (g) of this section does not apply, the fiduciary may appoint a  
24 cofiduciary to which subsection (5)(d) through (g) of this section  
25 does not apply, which may be a special fiduciary with limited powers,  
26 and the appointed cofiduciary may exercise the power to adjust under  
27 subsection (1) of this section, unless the appointment of a  
28 cofiduciary or the exercise of the power by a cofiduciary is not  
29 permitted by the terms of the trust or law other than this chapter.

30 (7) A fiduciary may release or delegate to a cofiduciary the  
31 power to adjust under subsection (1) of this section if the fiduciary  
32 determines that the fiduciary's possession or exercise of the power  
33 will or may:

34 (a) Cause a result described in subsection (5)(a) through (f) or  
35 (h) of this section; or

36 (b) Deprive the trust of a tax benefit or impose a tax burden not  
37 described in subsection (5)(a) through (f) of this section.

38 (8) A fiduciary's release or delegation to a cofiduciary under  
39 subsection (7) of this section of the power to adjust under  
40 subsection (1) of this section:

1 (a) Must be in a record;  
2 (b) Applies to the entire power, unless the release or delegation  
3 provides a limitation, which may be a limitation to the power to  
4 adjust:  
5 (i) From income to principal;  
6 (ii) From principal to income;  
7 (iii) For specified property; or  
8 (iv) In specified circumstances;  
9 (c) For a delegation, may be modified by a redelegation under  
10 this subsection by the cofiduciary to which the delegation is made;  
11 and  
12 (d) Subject to (c) of this subsection (8), is permanent, unless  
13 the release or delegation provides a specified period, including a  
14 period measured by the life of an individual or the lives of more  
15 than one individual.  
16 (9) Terms of a trust which deny or limit the power to adjust  
17 between income and principal do not affect the application of this  
18 section, unless the terms of the trust expressly deny or limit the  
19 power to adjust under subsection (1) of this section.  
20 (10) The exercise of the power to adjust under subsection (1) of  
21 this section in any accounting period may apply to the current  
22 period, the immediately preceding period, and one or more subsequent  
23 periods.  
24 (11) A description of the exercise of the power to adjust under  
25 subsection (1) of this section must be:  
26 (a) Included in a report, if any, sent to all beneficiaries; or  
27 (b) Communicated at least annually to all beneficiaries that  
28 receive or are entitled to receive income from the trust or would be  
29 entitled to receive a distribution of principal if the trust were  
30 terminated at the time the notice is sent, assuming no power of  
31 appointment is exercised.

32 **ARTICLE 3**

33 **UNITRUST**

34 NEW SECTION. **Sec. 301.** DEFINITIONS. The definitions in this  
35 section apply throughout this article unless the context clearly  
36 requires otherwise.

37 (1) "Applicable value" means the amount of the net fair market  
38 value of a trust taken into account under section 307 of this act.

1 (2) "Express unitrust" means a trust for which, under the terms  
2 of the trust without regard to this article, income or net income  
3 must or may be calculated as a unitrust amount.

4 (3) "Income trust" means a trust that is not a unitrust.

5 (4) "Net fair market value of a trust" means the fair market  
6 value of the assets of the trust, less the noncontingent liabilities  
7 of the trust.

8 (5) "Unitrust" means a trust for which net income is a unitrust  
9 amount. The term includes an express unitrust.

10 (6) "Unitrust amount" means an amount computed by multiplying a  
11 determined value of a trust by a determined percentage. For a  
12 unitrust administered under a unitrust policy, the term means the  
13 applicable value, multiplied by the unitrust rate.

14 (7) "Unitrust policy" means a policy described in sections 305  
15 through 309 of this act and adopted under section 303 of this act.

16 (8) "Unitrust rate" means the rate used to compute the unitrust  
17 amount under subsection (6) of this section for a unitrust  
18 administered under a unitrust policy.

19 NEW SECTION. **Sec. 302.** APPLICATION—DUTIES AND REMEDIES. (1)  
20 Except as otherwise provided in subsection (2) of this section, this  
21 article applies to:

22 (a) An income trust, unless the terms of the trust expressly  
23 prohibit use of this article by a specific reference to this article  
24 or an explicit expression of intent that net income not be calculated  
25 as a unitrust amount; and

26 (b) An express unitrust, except to the extent the terms of the  
27 trust explicitly:

28 (i) Prohibit use of this article by a specific reference to this  
29 article;

30 (ii) Prohibit conversion to an income trust; or

31 (iii) Limit changes to the method of calculating the unitrust  
32 amount.

33 (2) This article does not apply to a trust described in 26 U.S.C.  
34 Sec. 170(f)(2)(B), 642(c)(5), 664(d), or 2702(a)(3)(A)(ii) or (iii)  
35 or (b), as amended, as of the effective date of this section.

36 (3) An income trust to which this article applies under  
37 subsection (1)(a) of this section may be converted to a unitrust  
38 under this article regardless of the terms of the trust concerning  
39 distributions. Conversion to a unitrust under this article does not

1 affect other terms of the trust concerning distributions of income or  
2 principal.

3 (4) This article applies to an estate only to the extent a trust  
4 is a beneficiary of the estate. To the extent of the trust's interest  
5 in the estate, the estate may be administered as a unitrust, the  
6 administration of the estate as a unitrust may be discontinued, or  
7 the percentage or method used to calculate the unitrust amount may be  
8 changed, in the same manner as for a trust under this article.

9 (5) This article does not create a duty to take or consider  
10 action under this article or to inform a beneficiary about the  
11 applicability of this article.

12 (6) A fiduciary that in good faith takes or fails to take an  
13 action under this article is not liable to a person affected by the  
14 action or inaction.

15 NEW SECTION. **Sec. 303.** AUTHORITY OF FIDUCIARY. (1) A fiduciary,  
16 without court approval, by complying with subsections (2) and (6) of  
17 this section, may:

18 (a) Convert an income trust to a unitrust if the fiduciary adopts  
19 in a record a unitrust policy for the trust providing:

20 (i) That in administering the trust the net income of the trust  
21 will be a unitrust amount rather than net income determined without  
22 regard to this article; and

23 (ii) The percentage and method used to calculate the unitrust  
24 amount;

25 (b) Change the percentage or method used to calculate a unitrust  
26 amount for a unitrust if the fiduciary adopts in a record a unitrust  
27 policy or an amendment or replacement of a unitrust policy providing  
28 changes in the percentage or method used to calculate the unitrust  
29 amount; or

30 (c) Convert a unitrust to an income trust if the fiduciary adopts  
31 in a record a determination that, in administering the trust, the net  
32 income of the trust will be net income determined without regard to  
33 this article rather than a unitrust amount.

34 (2) A fiduciary may take an action under subsection (1) of this  
35 section if:

36 (a) The fiduciary determines that the action will assist the  
37 fiduciary to administer a trust impartially;

1 (b) The fiduciary sends a notice in a record, in the manner  
2 required by section 304 of this act, describing and proposing to take  
3 the action;

4 (c) The fiduciary sends a copy of the notice under (b) of this  
5 subsection (2) to each settlor of the trust which is:

6 (i) If an individual, living; or

7 (ii) If not an individual, in existence;

8 (d) At least one member of each class of beneficiaries receiving  
9 the notice under (b) of this subsection (2) is:

10 (i) If an individual, legally competent;

11 (ii) If not an individual, in existence; or

12 (iii) Represented in the manner provided in section 304(2) of  
13 this act; and

14 (e) The fiduciary does not receive, by the date specified in the  
15 notice under section 304(3)(f) of this act, an objection in a record  
16 to the action proposed under (b) of this subsection (2) from a person  
17 to which the notice under (b) of this subsection (2) is sent.

18 (3) If a fiduciary receives, not later than the date stated in  
19 the notice under section 304(3)(e) of this act, an objection in a  
20 record described in section 304(3)(d) of this act to a proposed  
21 action, the fiduciary or a beneficiary may request the court to have  
22 the proposed action taken as proposed, taken with modifications, or  
23 prevented. A person described in section 304(1) of this act may  
24 oppose the proposed action in the proceeding under this subsection,  
25 whether or not the person:

26 (a) Consented under section 304(2) of this act; or

27 (b) Objected under section 304(3)(d) of this act.

28 (4) If, after sending a notice under subsection (2)(b) of this  
29 section, a fiduciary decides not to take the action proposed in the  
30 notice, the fiduciary shall notify in a record each person described  
31 in section 304(1) of this act of the decision not to take the action  
32 and the reasons for the decision.

33 (5) If a beneficiary requests in a record that a fiduciary take  
34 an action described in subsection (1) of this section and the  
35 fiduciary declines to act or does not act within ninety days after  
36 receiving the request, the beneficiary may request the court to  
37 direct the fiduciary to take the action requested.

38 (6) In deciding whether and how to take an action authorized by  
39 subsection (1) of this section, or whether and how to respond to a  
40 request by a beneficiary under subsection (5) of this section, a



1 fiduciary shall consider all factors relevant to the trust and the  
2 beneficiaries, including relevant factors in section 201(5) of this  
3 section.

4 (7) A fiduciary may release or delegate the power to convert an  
5 income trust to a unitrust under subsection (1)(a) of this section,  
6 change the percentage or method used to calculate a unitrust amount  
7 under subsection (1)(b) of this section, or convert a unitrust to an  
8 income trust under subsection (1)(c) of this section, for a reason  
9 described in section 203(7) of this act and in the manner described  
10 in section 203(8) of this act.

11 NEW SECTION. **Sec. 304.** NOTICE. (1) A notice required by section  
12 303(2)(b) of this act must be sent to:

13 (a) All beneficiaries that receive or are entitled to receive  
14 income from the trust or would be entitled to receive a distribution  
15 of principal if the trust were terminated at the time the notice is  
16 sent, assuming no power of appointment is exercised; and

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

20 (i) Including a:

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

23 (B) Power to appoint or remove a trustee or person described in  
24 this subsection; and

25 (ii) Excluding a:

26 (A) Power of appointment;

27 (B) Power of a beneficiary over the trust, to the extent the  
28 exercise or nonexercise of the power affects the beneficial interest  
29 of the beneficiary; and

30 (C) Power over the trust if the terms of the trust provide that  
31 the power is held in a nonfiduciary capacity and the power must be  
32 held in a nonfiduciary capacity to achieve a tax objective under the  
33 federal internal revenue code of 1986, as amended, as of the  
34 effective date of this section.

35 (2) A person may consent in a record at any time to action  
36 proposed under section 303(2)(b) of this act. A notice required by  
37 section 303(2)(b) of this section need not be sent to a person that  
38 consents under this subsection.

1 (3) A notice required by section 303(2)(b) of this act must  
2 include:

3 (a) The action proposed under section 303(2)(b) of this act;

4 (b) For a conversion of an income trust to a unitrust, a copy of  
5 the unitrust policy adopted under section 303(1)(a) of this act;

6 (c) For a change in the percentage or method used to calculate  
7 the unitrust amount, a copy of the unitrust policy or amendment or  
8 replacement of the unitrust policy adopted under section 303(1)(b) of  
9 this act;

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

13 (e) The date by which an objection under (d) of this subsection  
14 (3) must be received by the fiduciary, which must be at least thirty  
15 days after the date the notice is sent;

16 (f) The date on which the action is proposed to be taken and the  
17 date on which the action is proposed to take effect;

18 (g) The name and contact information of the fiduciary; and

19 (h) The name and contact information of a person that may be  
20 contacted for additional information.

21 NEW SECTION. **Sec. 305.** UNITRUST POLICY. (1) In administering a  
22 unitrust under this article, a fiduciary shall follow a unitrust  
23 policy adopted under section 303(1)(a) or (b) of this act or amended  
24 or replaced under section 303(1)(b) of this act.

25 (2) A unitrust policy must provide:

26 (a) The unitrust rate or the method for determining the unitrust  
27 rate under section 306 of this act;

28 (b) The method for determining the applicable value under section  
29 307 of this act; and

30 (c) The rules described in sections 306 through 309 of this act,  
31 which apply in the administration of the unitrust, whether the rules  
32 are:

33 (i) Mandatory, as provided in sections 307(1) and 308(1) of this  
34 act; or

35 (ii) Optional, as provided in sections 306, 307(2), 308(2), and  
36 309(1) of this act, to the extent the fiduciary elects to adopt those  
37 rules.

1        NEW SECTION.    **Sec. 306.**    UNITRUST RATE. (1) Except as otherwise  
2 provided in section 309(2)(a) of this act, a unitrust rate may be:

3        (a) A fixed unitrust rate; or

4        (b) A unitrust rate that is determined for each period using:

5            (i) A market index or other published data; or

6            (ii) A mathematical blend of market indices or other published  
7 data over a stated number of preceding periods.

8        (2) Except as otherwise provided in section 309(2)(a) of this  
9 act, a unitrust policy may provide:

10        (a) A limit on how high the unitrust rate determined under  
11 subsection (1)(b) of this section may rise;

12        (b) A limit on how low the unitrust rate determined under  
13 subsection (1)(b) of this section may fall;

14        (c) A limit on how much the unitrust rate determined under  
15 subsection (1)(b) of this section may increase over the unitrust rate  
16 for the preceding period or a mathematical blend of unitrust rates  
17 over a stated number of preceding periods;

18        (d) A limit on how much the unitrust rate determined under  
19 subsection (1)(b) of this section may decrease below the unitrust  
20 rate for the preceding period or a mathematical blend of unitrust  
21 rates over a stated number of preceding periods; or

22        (e) A mathematical blend of any of the unitrust rates determined  
23 under subsection (1)(b) of this section and (a) through (d) of this  
24 subsection.

25        NEW SECTION.    **Sec. 307.**    APPLICABLE VALUE. (1) A unitrust policy  
26 must provide the method for determining the fair market value of an  
27 asset for the purpose of determining the unitrust amount, including:

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

30        (b) The date for valuing the asset in each period in which the  
31 asset is valued.

32        (2) Except as otherwise provided in section 309(2)(b) of this  
33 act, a unitrust policy may provide methods for determining the amount  
34 of the net fair market value of the trust to take into account in  
35 determining the applicable value, including:

36        (a) Obtaining an appraisal of an asset for which fair market  
37 value is not readily available;

38        (b) Exclusion of specific assets or groups or types of assets;

- 1 (c) Other exceptions or modifications of the treatment of  
2 specific assets or groups or types of assets;
- 3 (d) Identification and treatment of cash or property held for  
4 distribution;
- 5 (e) Use of:
- 6 (i) An average of fair market values over a stated number of  
7 preceding periods; or
- 8 (ii) Another mathematical blend of fair market values over a  
9 stated number of preceding periods;
- 10 (f) A limit on how much the applicable value of all assets,  
11 groups of assets, or individual assets may increase over:
- 12 (i) The corresponding applicable value for the preceding period;  
13 or
- 14 (ii) A mathematical blend of applicable values over a stated  
15 number of preceding periods;
- 16 (g) A limit on how much the applicable value of all assets,  
17 groups of assets, or individual assets may decrease below:
- 18 (i) The corresponding applicable value for the preceding period;  
19 or
- 20 (ii) A mathematical blend of applicable values over a stated  
21 number of preceding periods;
- 22 (h) The treatment of accrued income and other features of an  
23 asset which affect value; and
- 24 (i) Determining the liabilities of the trust, including treatment  
25 of liabilities to conform with the treatment of assets under (a)  
26 through (h) of this subsection (2).

27 NEW SECTION. **Sec. 308.** PERIOD. (1) A unitrust policy must  
28 provide the period used under sections 306 and 307 of this act.  
29 Except as otherwise provided in section 309(2)(c) of this act, the  
30 period may be:

- 31 (a) A calendar year;
- 32 (b) A twelve-month period other than a calendar year;
- 33 (c) A calendar quarter;
- 34 (d) A three-month period other than a calendar quarter; or
- 35 (e) Another period.

36 (2) Except as otherwise provided in section 309(2) of this act, a  
37 unitrust policy may provide standards for:

- 38 (a) Using fewer preceding periods under section 306 (1)(b)(ii) or  
39 (2)(c) or (d) of this act if:

- 1 (i) The trust was not in existence in a preceding period; or  
2 (ii) Market indices or other published data are not available for  
3 a preceding period;
- 4 (b) Using fewer preceding periods under section 307(2) (e)(i) or  
5 (ii), (f)(ii), or (g)(ii) of this act if:
- 6 (i) The trust was not in existence in a preceding period; or  
7 (ii) Fair market values are not available for a preceding period;  
8 and
- 9 (c) Prorating the unitrust amount on a daily basis for a part of  
10 a period in which the trust or the administration of the trust as a  
11 unitrust or the interest of any beneficiary commences or terminates.

12 NEW SECTION. **Sec. 309.** SPECIAL TAX BENEFITS—OTHER RULES. (1) A  
13 unitrust policy may:

- 14 (a) Provide methods and standards for:
- 15 (i) Determining the timing of distributions;
- 16 (ii) Making distributions in cash or in-kind or partly in cash  
17 and partly in-kind; or
- 18 (iii) Correcting an underpayment or overpayment to a beneficiary  
19 based on the unitrust amount if there is an error in calculating the  
20 unitrust amount;
- 21 (b) Specify sources and the order of sources, including  
22 categories of income for federal income tax purposes, from which  
23 distributions of a unitrust amount are paid; or
- 24 (c) Provide other standards and rules the fiduciary determines  
25 serve the interests of the beneficiaries.

26 (2) If a trust qualifies for a special tax benefit or a fiduciary  
27 is not an independent person:

28 (a) The unitrust rate established under section 306 of this act  
29 may not be less than three percent or more than five percent;

30 (b) The only provisions of section 307 of this act that apply are  
31 section 307 (1) and (2)(a), (d), (e)(i), and (i) of this act;

32 (c) The only period that may be used under section 308 of this  
33 act is a calendar year under section 308(1)(a) of this act; and

34 (d) The only other provisions of section 308 of this act that  
35 apply are section 308(2) (b)(i) and (c) of this act.

36 **ARTICLE 4**

37 **ALLOCATION OF RECEIPTS**

38 **PART 1**



1 (b) Money received in an entity distribution in an exchange for  
2 part or all of the fiduciary's interest in the entity, to the extent  
3 the entity distribution reduces the fiduciary's interest in the  
4 entity relative to the interests of other persons that own or hold  
5 interests in the entity;

6 (c) Money received in an entity distribution that the fiduciary  
7 determines or estimates is a capital distribution; and

8 (d) Money received in an entity distribution from an entity that  
9 is:

10 (i) A regulated investment company or real estate investment  
11 trust if the money received is a capital gain dividend for federal  
12 income tax purposes; or

13 (ii) Treated for federal income tax purposes comparably to the  
14 treatment described in (d)(i) of this subsection (4).

15 (5) A fiduciary may determine or estimate that money received in  
16 an entity distribution is a capital distribution:

17 (a) By relying without inquiry or investigation on a  
18 characterization of the entity distribution provided by or on behalf  
19 of the entity, unless the fiduciary:

20 (i) Determines, on the basis of information known to the  
21 fiduciary, that the characterization is or may be incorrect; or

22 (ii) Owns or holds more than fifty percent of the voting interest  
23 in the entity;

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

30 (c) If neither (a) or (b) of this subsection (5) applies, by  
31 considering the factors in subsection (6) of this section and the  
32 information known to the fiduciary or provided to the fiduciary by or  
33 on behalf of the entity.

34 (6) In making a determination or estimate under subsection (5)(c)  
35 of this section, a fiduciary may consider:

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

38 (b) The amount of money or property received in:

39 (i) The entity distribution; or

1 (ii) What the fiduciary determines is or will be a series of  
2 related entity distributions;

3 (c) The amount described in (b) of this subsection compared to  
4 the amount the fiduciary determines or estimates is, during the  
5 current or preceding accounting periods:

6 (i) The entity's operating income;

7 (ii) The proceeds of the entity's sale or other disposition of:

8 (A) All or part of the business or other activity conducted by  
9 the entity;

10 (B) One or more business assets that are not sold to customers in  
11 the ordinary course of the business or other activity conducted by  
12 the entity; or

13 (C) One or more assets other than business assets, unless the  
14 entity's primary activity is to invest in assets to realize gain on  
15 the disposition of all or some of the assets;

16 (iii) If the entity's primary activity is to invest in assets to  
17 realize gain on the disposition of all or some of the assets, the  
18 gain realized on the disposition;

19 (iv) The entity's regular, periodic entity distributions;

20 (v) The amount of money the entity has accumulated;

21 (vi) The amount of money the entity has borrowed;

22 (vii) The amount of money the entity has received from the  
23 sources described in sections 407, 410, 411, and 412 of this act; and

24 (viii) The amount of money the entity has received from a source  
25 not otherwise described in this subsection; and

26 (d) Any other factor the fiduciary determines is relevant.

27 (7) If, after applying subsections (3) through (6) of this  
28 section, a fiduciary determines that a part of an entity distribution  
29 is a capital distribution but is in doubt about the amount of the  
30 entity distribution which is a capital distribution, the fiduciary  
31 shall allocate to principal the amount of the entity distribution  
32 which is in doubt.

33 (8) If a fiduciary receives additional information about the  
34 application of this section to an entity distribution before the  
35 fiduciary has paid part of the entity distribution to a beneficiary,  
36 the fiduciary may consider the additional information before making  
37 the payment to the beneficiary and may change a decision to make the  
38 payment to the beneficiary.

39 (9) If a fiduciary receives additional information about the  
40 application of this section to an entity distribution after the



1 fiduciary has paid part of the entity distribution to a beneficiary,  
2 the fiduciary is not required to change or recover the payment to the  
3 beneficiary but may consider that information in determining whether  
4 to exercise the power to adjust under section 203 of this act.

5 NEW SECTION. **Sec. 402.** DISTRIBUTION FROM TRUST OR ESTATE. A  
6 fiduciary shall allocate to income an amount received as a  
7 distribution of income, including a unitrust distribution under  
8 article 3 of this chapter, from a trust or estate in which the  
9 fiduciary has an interest, other than an interest the fiduciary  
10 purchased in a trust that is an investment entity, and shall allocate  
11 to principal an amount received as a distribution of principal from  
12 the trust or estate. If a fiduciary purchases, or receives from a  
13 settlor, an interest in a trust that is an investment entity, section  
14 401, 415, or 416 of this act applies to a receipt from the trust.

15 NEW SECTION. **Sec. 403.** BUSINESS OR OTHER ACTIVITY CONDUCTED BY  
16 FIDUCIARY. (1) This section applies to a business or other activity  
17 conducted by a fiduciary if the fiduciary determines that it is in  
18 the interests of the beneficiaries to account separately for the  
19 business or other activity instead of:

20 (a) Accounting for the business or other activity as part of the  
21 fiduciary's general accounting records; or

22 (b) Conducting the business or other activity through an entity  
23 described in section 401(1)(b)(i) of this act.

24 (2) A fiduciary may account separately under this section for the  
25 transactions of a business or other activity, whether or not assets  
26 of the business or other activity are segregated from other assets  
27 held by the fiduciary.

28 (3) A fiduciary that accounts separately under this section for a  
29 business or other activity:

30 (a) May determine:

31 (i) The extent to which the net cash receipts of the business or  
32 other activity must be retained for:

33 (A) Working capital;

34 (B) The acquisition or replacement of fixed assets; and

35 (C) Other reasonably foreseeable needs of the business or other  
36 activity; and

1 (ii) The extent to which the remaining net cash receipts are  
2 accounted for as principal or income in the fiduciary's general  
3 accounting records for the trust;

4 (b) May make a determination under (a) of this subsection (3)  
5 separately and differently from the fiduciary's decisions concerning  
6 distributions of income or principal; and

7 (c) Shall account for the net amount received from the sale of an  
8 asset of the business or other activity, other than a sale in the  
9 ordinary course of the business or other activity, as principal in  
10 the fiduciary's general accounting records for the trust, to the  
11 extent the fiduciary determines that the net amount received is no  
12 longer required in the conduct of the business or other activity.

13 (4) Activities for which a fiduciary may account separately under  
14 this section include:

15 (a) Retail, manufacturing, service, and other traditional  
16 business activities;

17 (b) Farming;

18 (c) Raising and selling livestock and other animals;

19 (d) Managing rental properties;

20 (e) Extracting minerals, water, and other natural resources;

21 (f) Growing and cutting timber;

22 (g) An activity to which section 414, 415, or 416 of this act  
23 applies; and

24 (h) Any other business conducted by the fiduciary.

## 25 PART 2

### 26 RECEIPTS NOT NORMALLY APPORTIONED

27 NEW SECTION. **Sec. 404.** PRINCIPAL RECEIPTS. A fiduciary shall  
28 allocate to principal:

29 (1) To the extent not allocated to income under this chapter, an  
30 asset received from:

31 (a) An individual during the individual's lifetime;

32 (b) An estate;

33 (c) A trust on termination of an income interest; or

34 (d) A payor under a contract naming the fiduciary as beneficiary;

35 (2) Except as otherwise provided in this article, money or other  
36 property received from the sale, exchange, liquidation, or change in  
37 form of a principal asset;

1 (3) An amount recovered from a third party to reimburse the  
2 fiduciary because of a disbursement described in section 502(1) of  
3 this act or for another reason to the extent not based on loss of  
4 income;

5 (4) Proceeds of property taken by eminent domain, except that  
6 proceeds awarded for loss of income in an accounting period are  
7 income if a current income beneficiary had a mandatory income  
8 interest during the period;

9 (5) Net income received in an accounting period during which  
10 there is no beneficiary to which a fiduciary may or must distribute  
11 income; and

12 (6) Other receipts as provided in part 3 of this article.

13 NEW SECTION. **Sec. 405.** RENTAL PROPERTY. To the extent a  
14 fiduciary does not account for the management of rental property as a  
15 business under section 403 of this act, the fiduciary shall allocate  
16 to income an amount received as rent of real or personal property,  
17 including an amount received for cancellation or renewal of a lease.  
18 An amount received as a refundable deposit, including a security  
19 deposit or a deposit that is to be applied as rent for future  
20 periods:

21 (1) Must be added to principal and held subject to the terms of  
22 the lease, except as otherwise provided by law other than this  
23 chapter; and

24 (2) Is not allocated to income or available for distribution to a  
25 beneficiary until the fiduciary's contractual obligations have been  
26 satisfied with respect to that amount.

27 NEW SECTION. **Sec. 406.** RECEIPT ON OBLIGATION TO BE PAID IN  
28 MONEY. (1) This section does not apply to an obligation to which  
29 section 409, 410, 411, 412, 414, 415, or 416 of this act applies.

30 (2) A fiduciary shall allocate to income, without provision for  
31 amortization of premium, an amount received as interest on an  
32 obligation to pay money to the fiduciary, including an amount  
33 received as consideration for prepaying principal.

34 (3) A fiduciary shall allocate to principal an amount received  
35 from the sale, redemption, or other disposition of an obligation to  
36 pay money to the fiduciary. A fiduciary shall allocate to income the  
37 increment in value of a bond or other obligation for the payment of  
38 money bearing no stated interest but payable or redeemable, at

1 maturity or another future time, in an amount that exceeds the amount  
2 in consideration of which it was issued.

3 NEW SECTION. **Sec. 407.** INSURANCE POLICY OR CONTRACT. (1) This  
4 section does not apply to a contract to which section 409 of this act  
5 applies.

6 (2) Except as otherwise provided in subsection (3) of this  
7 section, a fiduciary shall allocate to principal the proceeds of a  
8 life insurance policy or other contract received by the fiduciary as  
9 beneficiary, including a contract that insures against damage to,  
10 destruction of, or loss of title to an asset. The fiduciary shall  
11 allocate dividends on an insurance policy to income to the extent  
12 premiums on the policy are paid from income and to principal to the  
13 extent premiums on the policy are paid from principal.

14 (3) A fiduciary shall allocate to income proceeds of a contract  
15 that insures the fiduciary against loss of:

- 16 (a) Occupancy or other use by a current income beneficiary;
- 17 (b) Income; or
- 18 (c) Subject to section 403 of this act, profits from a business.

19 **PART 3**  
20 **RECEIPTS NORMALLY APPORTIONED**

21 NEW SECTION. **Sec. 408.** INSUBSTANTIAL ALLOCATION NOT REQUIRED.  
22 (1) If a fiduciary determines that an allocation between income and  
23 principal required by section 409, 410, 411, 412, or 415 of this act  
24 is insubstantial, the fiduciary may allocate the entire amount to  
25 principal, unless section 203(5) of this act applies to the  
26 allocation.

27 (2) A fiduciary may presume an allocation is insubstantial under  
28 subsection (1) of this section if:

29 (a) The amount of the allocation would increase or decrease net  
30 income in an accounting period, as determined before the allocation,  
31 by less than ten percent; and

32 (b) The asset producing the receipt to be allocated has a fair  
33 market value less than ten percent of the total fair market value of  
34 the assets owned or held by the fiduciary at the beginning of the  
35 accounting period.

36 (3) The power to make a determination under subsection (1) of  
37 this section may be:

- 1 (a) Exercised by a cofiduciary in the manner described in section  
2 203(6) of this act; or  
3 (b) Released or delegated for a reason described in section  
4 203(7) of this act and in the manner described in section 203(8) of  
5 this act.

6 NEW SECTION. **Sec. 409.** DEFERRED COMPENSATION, ANNUITY, OR  
7 SIMILAR PAYMENT. (1) The definitions in this subsection apply  
8 throughout this section unless the context clearly requires  
9 otherwise.

10 (a) "Internal income of a separate fund" means the amount  
11 determined under subsection (2) of this section.

12 (b) "Marital trust" means a trust:

13 (i) Of which the settlor's surviving spouse is the only current  
14 income beneficiary and is entitled to a distribution of all the  
15 current net income of the trust; and

16 (ii) That qualifies for a marital deduction with respect to the  
17 settlor's estate under 26 U.S.C. Sec. 2056 of the federal internal  
18 revenue code of 1986, as amended, as of the effective date of this  
19 section, because:

20 (A) An election to qualify for a marital deduction under 26  
21 U.S.C. Sec. 2056(b)(7) of the federal internal revenue code of 1986,  
22 as amended, as of the effective date of this section, has been made;  
23 or

24 (B) The trust qualifies for a marital deduction under 26 U.S.C.  
25 Sec. 2056(b)(5) of the federal internal revenue code of 1986, as  
26 amended, as of the effective date of this section.

27 (c) "Payment" means an amount a fiduciary may receive over a  
28 fixed number of years or during the life of one or more individuals  
29 because of services rendered or property transferred to the payor in  
30 exchange for future amounts the fiduciary may receive. The term  
31 includes an amount received in money or property from the payor's  
32 general assets or from a separate fund created by the payor.

33 (d) "Separate fund" includes a private or commercial annuity, an  
34 individual retirement account, and a pension, profit-sharing, stock  
35 bonus, or stock ownership plan.

36 (2) For each accounting period, the following rules apply to a  
37 separate fund:

1 (a) The fiduciary shall determine the internal income of the  
2 separate fund as if the separate fund were a trust subject to this  
3 chapter.

4 (b) If the fiduciary cannot determine the internal income of the  
5 separate fund under (a) of this subsection (2), the internal income  
6 of the separate fund is deemed to equal . . . . percent of the  
7 value of the separate fund, according to the most recent statement of  
8 value preceding the beginning of the accounting period.

9 (c) If the fiduciary cannot determine the value of the separate  
10 fund under (b) of this subsection (2), the value of the separate fund  
11 is deemed to equal the present value of the expected future payments,  
12 as determined under 26 U.S.C. Sec. 7520 of the federal internal  
13 revenue code of 1986, as amended, as of the effective date of this  
14 section, for the month preceding the beginning of the accounting  
15 period for which the computation is made.

16 (3) A fiduciary shall allocate a payment received from a separate  
17 fund during an accounting period to income, to the extent of the  
18 internal income of the separate fund during the period, and the  
19 balance to principal.

20 (4) The fiduciary of a marital trust shall:

21 (a) Withdraw from a separate fund the amount the current income  
22 beneficiary of the trust requests the fiduciary to withdraw, not  
23 greater than the amount by which the internal income of the separate  
24 fund during the accounting period exceeds the amount the fiduciary  
25 otherwise receives from the separate fund during the period;

26 (b) Transfer from principal to income the amount the current  
27 income beneficiary requests the fiduciary to transfer, not greater  
28 than the amount by which the internal income of the separate fund  
29 during the period exceeds the amount the fiduciary receives from the  
30 separate fund during the period after the application of (a) of this  
31 subsection (2); and

32 (c) Distribute to the current income beneficiary as income:

33 (i) The amount of the internal income of the separate fund  
34 received or withdrawn during the period; and

35 (ii) The amount transferred from principal to income under (b) of  
36 this subsection (2).

37 (5) For a trust, other than a marital trust, of which one or more  
38 current income beneficiaries are entitled to a distribution of all  
39 the current net income, the fiduciary shall transfer from principal  
40 to income the amount by which the internal income of a separate fund

1 during the accounting period exceeds the amount the fiduciary  
2 receives from the separate fund during the period.

3 NEW SECTION. **Sec. 410.** LIQUIDATING ASSET. (1) In this section,  
4 "liquidating asset" means an asset whose value will diminish or  
5 terminate because the asset is expected to produce receipts for a  
6 limited time. The term includes a leasehold, patent, copyright,  
7 royalty right, and right to receive payments during a period of more  
8 than one year under an arrangement that does not provide for the  
9 payment of interest on the unpaid balance.

10 (2) This section does not apply to a receipt subject to section  
11 401, 409, 411, 412, 414, 415, 416, or 503 of this act.

12 (3) A fiduciary shall allocate:

13 (a) To income:

14 (i) A receipt produced by a liquidating asset, to the extent the  
15 receipt does not exceed . . . . percent of the value of the asset;  
16 or

17 (ii) If the fiduciary cannot determine the value of the asset,  
18 ten percent of the receipt; and

19 (b) To principal, the balance of the receipt.

20 NEW SECTION. **Sec. 411.** MINERALS, WATER, AND OTHER NATURAL  
21 RESOURCES. (1) To the extent a fiduciary does not account for a  
22 receipt from an interest in minerals, water, or other natural  
23 resources as a business under section 403 of this act, the fiduciary  
24 shall allocate the receipt:

25 (a) To income, to the extent received:

26 (i) As delay rental or annual rent on a lease;

27 (ii) As a factor for interest or the equivalent of interest under  
28 an agreement creating a production payment; or

29 (iii) On account of an interest in renewable water;

30 (b) To principal, if received from a production payment, to the  
31 extent (a)(ii) of this subsection (1) does not apply; or

32 (c) Between income and principal equitably, to the extent  
33 received:

34 (i) On account of an interest in nonrenewable water;

35 (ii) As a royalty, shut-in-well payment, take-or-pay payment, or  
36 bonus; or

37 (iii) From a working interest or any other interest not provided  
38 for in (a), (b), or (c)(i) or (ii) of this subsection.

1 (2) This section applies to an interest owned or held by a  
2 fiduciary whether or not a settlor was extracting minerals, water, or  
3 other natural resources before the fiduciary owned or held the  
4 interest.

5 (3) An allocation of a receipt under subsection (1)(c) of this  
6 section is presumed to be equitable if the amount allocated to  
7 principal is equal to the amount allowed by the federal internal  
8 revenue code of 1986, as amended, as of the effective date of this  
9 section, as a deduction for depletion of the interest.

10 (4) If a fiduciary owns or holds an interest in minerals, water,  
11 or other natural resources before the effective date of this section,  
12 the fiduciary may allocate receipts from the interest as provided in  
13 this section or in the manner used by the fiduciary before the  
14 effective date of this section. If the fiduciary acquires an interest  
15 in minerals, water, or other natural resources on or after the  
16 effective date of this section, the fiduciary shall allocate receipts  
17 from the interest as provided in this section.

18 NEW SECTION. **Sec. 412.** TIMBER. (1) To the extent a fiduciary  
19 does not account for receipts from the sale of timber and related  
20 products as a business under section 403 of this act, the fiduciary  
21 shall allocate the net receipts:

22 (a) To income, to the extent the amount of timber cut from the  
23 land does not exceed the rate of growth of the timber;

24 (b) To principal, to the extent the amount of timber cut from the  
25 land exceeds the rate of growth of the timber or the net receipts are  
26 from the sale of standing timber;

27 (c) Between income and principal if the net receipts are from the  
28 lease of land used for growing and cutting timber or from a contract  
29 to cut timber from land, by determining the amount of timber cut from  
30 the land under the lease or contract and applying the rules in (a) or  
31 (b) of this subsection; or

32 (d) To principal, to the extent advance payments, bonuses, and  
33 other payments are not allocated under (a), (b), or (c) of this  
34 subsection.

35 (2) In determining net receipts to be allocated under subsection  
36 (1) of this section, a fiduciary shall deduct and transfer to  
37 principal a reasonable amount for depletion.



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

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

13 NEW SECTION. **Sec. 413.** MARITAL DEDUCTION PROPERTY NOT  
14 PRODUCTIVE OF INCOME. (1) If a trust received property for which a  
15 gift or estate tax marital deduction was allowed and the settlor's  
16 spouse holds a mandatory income interest in the trust, the spouse may  
17 require the trustee, to the extent the trust assets otherwise do not  
18 provide the spouse with sufficient income from or use of the trust  
19 assets to qualify for the deduction, to:

20 (a) Make property productive of income;

21 (b) Convert property to property productive of income within a  
22 reasonable time; or

23 (c) Exercise the power to adjust under section 203 of this act.

24 (2) The trustee may decide which action or combination of actions  
25 in subsection (1) of this section to take.

26 NEW SECTION. **Sec. 414.** DERIVATIVE OR OPTION. (1) In this  
27 section, "derivative" means a contract, instrument, other  
28 arrangement, or combination of contracts, instruments, or other  
29 arrangements, the value, rights, and obligations of which are, in  
30 whole or in part, dependent on or derived from an underlying tangible  
31 or intangible asset, group of tangible or intangible assets, index,  
32 or occurrence of an event. The term includes stocks, fixed income  
33 securities, and financial instruments and arrangements based on  
34 indices, commodities, interest rates, weather-related events, and  
35 credit default events.

36 (2) To the extent a fiduciary does not account for a transaction  
37 in derivatives as a business under section 403 of this act, the  
38 fiduciary shall allocate ten percent of receipts from the transaction

1 and ten percent of disbursements made in connection with the  
2 transaction to income and the balance to principal.

3 (3) Subsection (4) of this section applies if:

4 (a) A fiduciary:

5 (i) Grants an option to buy property from a trust, whether or not  
6 the trust owns the property when the option is granted;

7 (ii) Grants an option that permits another person to sell  
8 property to the trust; or

9 (iii) Acquires an option to buy property for the trust or an  
10 option to sell an asset owned by the trust; and

11 (b) The fiduciary or other owner of the asset is required to  
12 deliver the asset if the option is exercised.

13 (4) If this subsection applies, the fiduciary shall allocate ten  
14 percent to income and the balance to principal of the following  
15 amounts:

16 (a) An amount received for granting the option;

17 (b) An amount paid to acquire the option; and

18 (c) Gain or loss realized on the exercise, exchange, settlement,  
19 offset, closing, or expiration of the option.

20 NEW SECTION. **Sec. 415.** ASSET-BACKED SECURITY. (1) Except as  
21 otherwise provided in subsection (2) of this section, a fiduciary  
22 shall allocate to income a receipt from or related to an asset-backed  
23 security, to the extent the payor identifies the payment as being  
24 from interest or other current return, and to principal the balance  
25 of the receipt.

26 (2) If a fiduciary receives one or more payments in exchange for  
27 part or all of the fiduciary's interest in an asset-backed security,  
28 including a liquidation or redemption of the fiduciary's interest in  
29 the security, the fiduciary shall allocate to income ten percent of  
30 receipts from the transaction and ten percent of disbursements made  
31 in connection with the transaction, and to principal the balance of  
32 the receipts and disbursements.

33 NEW SECTION. **Sec. 416.** OTHER FINANCIAL INSTRUMENT OR  
34 ARRANGEMENT. A fiduciary shall allocate receipts from or related to a  
35 financial instrument or arrangement not otherwise addressed by this  
36 chapter. The allocation must be consistent with sections 414 and 415  
37 of this act.

1 **ARTICLE 5**

2 **ALLOCATION OF DISBURSEMENTS**

3 NEW SECTION. **Sec. 501.** DISBURSEMENT FROM INCOME. Subject to  
4 section 504 of this act, and except as otherwise provided in section  
5 601(3) (b) or (c) of this act, a fiduciary shall disburse from  
6 income:

7 (1) One-half of:

8 (a) The regular compensation of the fiduciary and any person  
9 providing investment advisory, custodial, or other services to the  
10 fiduciary, to the extent income is sufficient; and

11 (b) An expense for an accounting, judicial or nonjudicial  
12 proceeding, or other matter that involves both income and successive  
13 interests, to the extent income is sufficient;

14 (2) The balance of the disbursements described in subsection (1)  
15 of this section, to the extent a fiduciary that is an independent  
16 person determines that making those disbursements from income would  
17 be in the interests of the beneficiaries;

18 (3) Another ordinary expense incurred in connection with  
19 administration, management, or preservation of property and  
20 distribution of income, including interest, an ordinary repair,  
21 regularly recurring tax assessed against principal, and an expense of  
22 an accounting, judicial or nonjudicial proceeding, or other matter  
23 that involves primarily an income interest, to the extent income is  
24 sufficient; and

25 (4) A premium on insurance covering loss of a principal asset or  
26 income from or use of the asset.

27 NEW SECTION. **Sec. 502.** DISBURSEMENT FROM PRINCIPAL. (1) Subject  
28 to section 505 of this act, and except as otherwise provided in  
29 section 601(3)(b) of this act, a fiduciary shall disburse from  
30 principal:

31 (a) The balance of the disbursements described in section 501 (1)  
32 and (3) of this act after application of section 501(2) of this act;

33 (b) The fiduciary's compensation calculated on principal as a fee  
34 for acceptance, distribution, or termination;

35 (c) A payment of an expense to prepare for or execute a sale or  
36 other disposition of property;

37 (d) A payment on the principal of a trust debt;

1 (e) A payment of an expense of an accounting, judicial or  
2 nonjudicial proceeding, or other matter that involves primarily  
3 principal, including a proceeding to construe the terms of the trust  
4 or protect property;

5 (f) A payment of a premium for insurance, including title  
6 insurance, not described in section 501(4) of this act, of which the  
7 fiduciary is the owner and beneficiary;

8 (g) A payment of an estate or inheritance tax or other tax  
9 imposed because of the death of a decedent, including penalties,  
10 apportioned to the trust; and

11 (h) A payment:

12 (i) Related to environmental matters, including:

13 (A) Reclamation;

14 (B) Assessing environmental conditions;

15 (C) Remedying and removing environmental contamination;

16 (D) Monitoring remedial activities and the release of substances;

17 (E) Preventing future releases of substances;

18 (F) Collecting amounts from persons liable or potentially liable  
19 for the costs of activities described in (h) (i) (A) through (E) of  
20 this subsection (1);

21 (G) Penalties imposed under environmental laws or regulations;

22 (H) Other actions to comply with environmental laws or  
23 regulations;

24 (I) Statutory or common law claims by third parties; and

25 (J) Defending claims based on environmental matters; and

26 (ii) For a premium for insurance for matters described in (h) (i)  
27 of this subsection (1).

28 (2) If a principal asset is encumbered with an obligation that  
29 requires income from the asset to be paid directly to a creditor, the  
30 fiduciary shall transfer from principal to income an amount equal to  
31 the income paid to the creditor in reduction of the principal balance  
32 of the obligation.

33 NEW SECTION. **Sec. 503.** TRANSFER FROM INCOME TO PRINCIPAL FOR  
34 DEPRECIATION. (1) In this section, "depreciation" means a reduction  
35 in value due to wear, tear, decay, corrosion, or gradual obsolescence  
36 of a tangible asset having a useful life of more than one year.

37 (2) A fiduciary may transfer to principal a reasonable amount of  
38 the net cash receipts from a principal asset that is subject to  
39 depreciation, but may not transfer any amount for depreciation:

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

3 (b) Of tangible personal property held or made available for the  
4 personal use or enjoyment of a beneficiary; or

5 (c) Under this section, to the extent the fiduciary accounts:

6 (i) Under section 410 of this act for the asset; or

7 (ii) Under section 403 of this act for the business or other  
8 activity in which the asset is used.

9 (3) An amount transferred to principal under this section need  
10 not be separately held.

11 NEW SECTION. **Sec. 504.** REIMBURSEMENT OF INCOME FROM PRINCIPAL.

12 (1) If a fiduciary makes or expects to make an income disbursement  
13 described in subsection (2) of this section, the fiduciary may  
14 transfer an appropriate amount from principal to income in one or  
15 more accounting periods to reimburse income.

16 (2) To the extent the fiduciary has not been and does not expect  
17 to be reimbursed by a third party, income disbursements to which  
18 subsection (1) of this section applies include:

19 (a) An amount chargeable to principal but paid from income  
20 because principal is illiquid;

21 (b) A disbursement made to prepare property for sale, including  
22 improvements and commissions; and

23 (c) A disbursement described in section 502(1) of this act.

24 (3) If an asset whose ownership gives rise to an income  
25 disbursement becomes subject to a successive interest after an income  
26 interest ends, the fiduciary may continue to make transfers under  
27 subsection (1) of this section.

28 NEW SECTION. **Sec. 505.** REIMBURSEMENT OF PRINCIPAL FROM INCOME.

29 (1) If a fiduciary makes or expects to make a principal disbursement  
30 described in subsection (2) of this section, the fiduciary may  
31 transfer an appropriate amount from income to principal in one or  
32 more accounting periods to reimburse principal or provide a reserve  
33 for future principal disbursements.

34 (2) To the extent a fiduciary has not been and does not expect to  
35 be reimbursed by a third party, principal disbursements to which  
36 subsection (1) of this section applies include:

37 (a) An amount chargeable to income but paid from principal  
38 because income is not sufficient;

1 (b) The cost of an improvement to principal, whether a change to  
2 an existing asset or the construction of a new asset, including a  
3 special assessment;

4 (c) A disbursement made to prepare property for rental, including  
5 tenant allowances, leasehold improvements, and commissions;

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

9 (e) A disbursement described in section 502(1) of this act.

10 (3) If an asset whose ownership gives rise to a principal  
11 disbursement becomes subject to a successive interest after an income  
12 interest ends, the fiduciary may continue to make transfers under  
13 subsection (1) of this section.

14 NEW SECTION. **Sec. 506.** INCOME TAXES. (1) A tax required to be  
15 paid by a fiduciary which is based on receipts allocated to income  
16 must be paid from income.

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

20 (3) Subject to subsection (4) of this section and sections 504,  
21 505, and 507 of this act, a tax required to be paid by a fiduciary on  
22 a share of an entity's taxable income in an accounting period must be  
23 paid from:

24 (a) Income and principal proportionately to the allocation  
25 between income and principal of receipts from the entity in the  
26 period; and

27 (b) Principal to the extent the tax exceeds the receipts from the  
28 entity in the period.

29 (4) After applying subsections (1) through (3) of this section, a  
30 fiduciary shall adjust income or principal receipts, to the extent  
31 the taxes the fiduciary pays are reduced because of a deduction for a  
32 payment made to a beneficiary.

33 NEW SECTION. **Sec. 507.** ADJUSTMENT BETWEEN INCOME AND PRINCIPAL  
34 BECAUSE OF TAXES. (1) A fiduciary may make an adjustment between  
35 income and principal to offset the shifting of economic interests or  
36 tax benefits between current income beneficiaries and successor  
37 beneficiaries which arises from:

1 (a) An election or decision the fiduciary makes regarding a tax  
2 matter, other than a decision to claim an income tax deduction to  
3 which subsection (2) of this section applies;

4 (b) An income tax or other tax imposed on the fiduciary or a  
5 beneficiary as a result of a transaction involving the fiduciary or a  
6 distribution by the fiduciary; or

7 (c) Ownership by the fiduciary of an interest in an entity a part  
8 of whose taxable income, whether or not distributed, is includable in  
9 the taxable income of the fiduciary or a beneficiary.

10 (2) If the amount of an estate tax marital or charitable  
11 deduction is reduced because a fiduciary deducts an amount paid from  
12 principal for income tax purposes instead of deducting it for estate  
13 tax purposes and, as a result, estate taxes paid from principal are  
14 increased and income taxes paid by the fiduciary or a beneficiary are  
15 decreased, the fiduciary shall charge each beneficiary that benefits  
16 from the decrease in income tax to reimburse the principal from which  
17 the increase in estate tax is paid. The total reimbursement must  
18 equal the increase in the estate tax, to the extent the principal  
19 used to pay the increase would have qualified for a marital or  
20 charitable deduction but for the payment. The share of the  
21 reimbursement for each fiduciary or beneficiary whose income taxes  
22 are reduced must be the same as its share of the total decrease in  
23 income tax.

24 (3) A fiduciary that charges a beneficiary under subsection (2)  
25 of this section may offset the charge by obtaining payment from the  
26 beneficiary, withholding an amount from future distributions to the  
27 beneficiary, or adopting another method or combination of methods.

## 28 **ARTICLE 6**

### 29 **DEATH OF INDIVIDUAL OR TERMINATION OF INCOME INTEREST**

30 NEW SECTION. **Sec. 601.** DETERMINATION AND DISTRIBUTION OF NET  
31 INCOME. (1) This section applies when:

32 (a) The death of an individual results in the creation of an  
33 estate or trust; or

34 (b) An income interest in a trust terminates, whether the trust  
35 continues or is distributed.

36 (2) A fiduciary of an estate or trust with an income interest  
37 that terminates shall determine, under subsection (7) of this section  
38 and articles 4, 5, and 7 of this chapter, the amount of net income

1 and net principal receipts received from property specifically given  
2 to a beneficiary. The fiduciary shall distribute the net income and  
3 net principal receipts to the beneficiary that is to receive the  
4 specific property.

5 (3) A fiduciary shall determine the income and net income of an  
6 estate or income interest in a trust which terminates, other than the  
7 amount of net income determined under subsection (2) of this section,  
8 under articles 4, 5, and 7 of this chapter and by:

9 (a) Including in net income all income from property used or sold  
10 to discharge liabilities;

11 (b) Paying from income or principal, in the fiduciary's  
12 discretion, fees of attorneys, accountants, and fiduciaries, court  
13 costs and other expenses of administration, and interest on estate  
14 and inheritance taxes and other taxes imposed because of the  
15 decedent's death, but the fiduciary may pay the expenses from income  
16 of property passing to a trust for which the fiduciary claims a  
17 federal estate tax marital or charitable deduction only to the  
18 extent:

19 (i) The payment of the expenses from income will not cause the  
20 reduction or loss of the deduction; or

21 (ii) The fiduciary makes an adjustment under section 507(2) of  
22 this act; and

23 (c) Paying from principal other disbursements made or incurred in  
24 connection with the settlement of the estate or the winding up of an  
25 income interest that terminates, including:

26 (i) To the extent authorized by the decedent's will, the terms of  
27 the trust, or applicable law, debts, funeral expenses, disposition of  
28 remains, family allowances, estate and inheritance taxes, and other  
29 taxes imposed because of the decedent's death; and

30 (ii) Related penalties that are apportioned, by the decedent's  
31 will, the terms of the trust, or applicable law, to the estate or  
32 income interest that terminates.

33 (4) If a decedent's will, the terms of a trust, or applicable law  
34 provides for the payment of interest or the equivalent of interest to  
35 a beneficiary that receives a pecuniary amount outright, the  
36 fiduciary shall make the payment from net income determined under  
37 subsection (3) of this section or from principal to the extent net  
38 income is insufficient.

39 (5) If a beneficiary is to receive a pecuniary amount outright  
40 from a trust after an income interest ends because of an income



1 beneficiary's death, and no payment of interest or the equivalent of  
2 interest is provided for by the terms of the trust or applicable law,  
3 the fiduciary shall pay the interest or the equivalent of interest to  
4 which the beneficiary would be entitled under applicable law if the  
5 pecuniary amount were required to be paid under a will.

6 (6) A fiduciary shall distribute net income remaining after  
7 payments required by subsections (4) and (5) of this section in the  
8 manner described in section 602 of this act to all other  
9 beneficiaries, including a beneficiary that receives a pecuniary  
10 amount in trust, even if the beneficiary holds an unqualified power  
11 to withdraw assets from the trust or other presently exercisable  
12 general power of appointment over the trust.

13 (7) A fiduciary may not reduce principal or income receipts from  
14 property described in subsection (2) of this section because of a  
15 payment described in section 501 or 502 of this act, to the extent  
16 the decedent's will, the terms of the trust, or applicable law  
17 requires the fiduciary to make the payment from assets other than the  
18 property or to the extent the fiduciary recovers or expects to  
19 recover the payment from a third party. The net income and principal  
20 receipts from the property must be determined by including the amount  
21 the fiduciary receives or pays regarding the property, whether the  
22 amount accrued or became due before, on, or after the date of the  
23 decedent's death or an income interest's terminating event, and  
24 making a reasonable provision for an amount the estate or income  
25 interest may become obligated to pay after the property is  
26 distributed.

27 NEW SECTION. **Sec. 602.** DISTRIBUTION TO SUCCESSOR BENEFICIARY.

28 (1) Except to the extent article 3 of this chapter applies for a  
29 beneficiary that is a trust, each beneficiary described in section  
30 601(6) of this act is entitled to receive a share of the net income  
31 equal to the beneficiary's fractional interest in undistributed  
32 principal assets, using values as of the distribution date. If a  
33 fiduciary makes more than one distribution of assets to beneficiaries  
34 to which this section applies, each beneficiary, including a  
35 beneficiary that does not receive part of the distribution, is  
36 entitled, as of each distribution date, to a share of the net income  
37 the fiduciary received after the decedent's death, an income  
38 interest's other terminating event, or the preceding distribution by  
39 the fiduciary.

1 (2) In determining a beneficiary's share of net income under  
2 subsection (1) of this section, the following rules apply:

3 (a) The beneficiary is entitled to receive a share of the net  
4 income equal to the beneficiary's fractional interest in the  
5 undistributed principal assets immediately before the distribution  
6 date.

7 (b) The beneficiary's fractional interest under (a) of this  
8 subsection must be calculated:

9 (i) On the aggregate value of the assets as of the distribution  
10 date without reducing the value by any unpaid principal obligation;  
11 and

12 (ii) Without regard to:

13 (A) Property specifically given to a beneficiary under the  
14 decedent's will or the terms of the trust; and

15 (B) Property required to pay pecuniary amounts not in trust.

16 (c) The distribution date under (a) of this subsection may be the  
17 date as of which the fiduciary calculates the value of the assets if  
18 that date is reasonably near the date on which the assets are  
19 distributed.

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

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

## 29 **ARTICLE 7**

### 30 **APPORTIONMENT AT BEGINNING AND END OF INCOME INTEREST**

31 NEW SECTION. **Sec. 701.** WHEN RIGHT TO INCOME BEGINS AND ENDS.

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

37 (a) The trust for the current income beneficiary; or

38 (b) A successive interest for a successor beneficiary.

1 (2) An asset becomes subject to a trust under subsection (1)(a)  
2 of this section:

3 (a) For an asset that is transferred to the trust during the  
4 settlor's life, on the date the asset is transferred;

5 (b) For an asset that becomes subject to the trust because of a  
6 decedent's death, on the date of the decedent's death, even if there  
7 is an intervening period of administration of the decedent's estate;  
8 or

9 (c) For an asset that is transferred to a fiduciary by a third  
10 party because of a decedent's death, on the date of the decedent's  
11 death.

12 (3) An asset becomes subject to a successive interest under  
13 subsection (1)(b) of this section on the day after the preceding  
14 income interest ends, as determined under subsection (4) of this  
15 section, even if there is an intervening period of administration to  
16 wind up the preceding income interest.

17 (4) An income interest ends on the day before an income  
18 beneficiary dies or another terminating event occurs or on the last  
19 day of a period during which there is no beneficiary to which a  
20 fiduciary may or must distribute income.

21 NEW SECTION. **Sec. 702.** APPORTIONMENT OF RECEIPTS AND  
22 DISBURSEMENTS WHEN DECEDENT DIES OR INCOME INTEREST BEGINS. (1) A  
23 fiduciary shall allocate an income receipt or disbursement, other  
24 than a receipt to which section 601(2) of this act applies, to  
25 principal if its due date occurs before the date on which:

26 (a) For an estate, the decedent died; or

27 (b) For a trust or successive interest, an income interest  
28 begins.

29 (2) If the due date of a periodic income receipt or disbursement  
30 occurs on or after the date on which a decedent died or an income  
31 interest begins, a fiduciary shall allocate the receipt or  
32 disbursement to income.

33 (3) If an income receipt or disbursement is not periodic or has  
34 no due date, a fiduciary shall treat the receipt or disbursement  
35 under this section as accruing from day to day. The fiduciary shall  
36 allocate to principal the portion of the receipt or disbursement  
37 accruing before the date on which a decedent died or an income  
38 interest begins, and to income the balance.

1 (4) A receipt or disbursement is periodic under subsections (2)  
2 and (3) of this section if:

3 (a) The receipt or disbursement must be paid at regular intervals  
4 under an obligation to make payments; or

5 (b) The payor customarily makes payments at regular intervals.

6 (5) An item of income or obligation is due under this section on  
7 the date the payor is required to make a payment. If a payment date  
8 is not stated, there is no due date.

9 (6) Distributions to shareholders or other owners from an entity  
10 to which section 401 of this act applies are due:

11 (a) On the date fixed by or on behalf of the entity for  
12 determining the persons entitled to receive the distribution;

13 (b) If no date is fixed, on the date of the decision by or on  
14 behalf of the entity to make the distribution; or

15 (c) If no date is fixed and the fiduciary does not know the date  
16 of the decision by or on behalf of the entity to make the  
17 distribution, on the date the fiduciary learns of the decision.

18 NEW SECTION. **Sec. 703.** APPORTIONMENT WHEN INCOME INTEREST ENDS.

19 (1) In this section, "undistributed income" means net income received  
20 on or before the date on which an income interest ends. The term does  
21 not include an item of income or expense which is due or accrued or  
22 net income that has been added or is required to be added to  
23 principal under the terms of the trust.

24 (2) Except as otherwise provided in subsection (3) of this  
25 section, when a mandatory income interest of a beneficiary ends, the  
26 fiduciary shall pay the beneficiary's share of the undistributed  
27 income that is not disposed of under the terms of the trust to the  
28 beneficiary or, if the beneficiary does not survive the date the  
29 interest ends, to the beneficiary's estate.

30 (3) If a beneficiary has an unqualified power to withdraw more  
31 than five percent of the value of a trust immediately before an  
32 income interest ends:

33 (a) The fiduciary shall allocate to principal the undistributed  
34 income from the portion of the trust which may be withdrawn; and

35 (b) Subsection (2) of this section applies only to the balance of  
36 the undistributed income.

37 (4) When a fiduciary's obligation to pay a fixed annuity or a  
38 fixed fraction of the value of assets ends, the fiduciary shall

1 prorate the final payment as required to preserve an income tax, gift  
2 tax, estate tax, or other tax benefit.

3 **ARTICLE 8**

4 **MISCELLANEOUS PROVISIONS**

5 NEW SECTION. **Sec. 801.** UNIFORMITY OF APPLICATION AND  
6 CONSTRUCTION. In applying and construing this uniform act,  
7 consideration must be given to the need to promote uniformity of the  
8 law with respect to its subject matter among states that enact it.

9 NEW SECTION. **Sec. 802.** RELATION TO ELECTRONIC SIGNATURES IN  
10 GLOBAL AND NATIONAL COMMERCE ACT. This chapter modifies, limits, or  
11 supersedes the electronic signatures in global and national commerce  
12 act, 15 U.S.C. Sec. 7001 et seq., but does not modify, limit, or  
13 supersede section 101(c) of that act (15 U.S.C. Sec. 7001(c)) or  
14 authorize electronic delivery of any of the notices described in  
15 section 103(b) of that act (15 U.S.C. Sec. 7003(b)).

16 NEW SECTION. **Sec. 803.** APPLICATION TO TRUST OR ESTATE. This  
17 chapter applies to a trust or estate existing or created on or after  
18 the effective date of this section, except as otherwise expressly  
19 provided in the terms of the trust or this act.

20 NEW SECTION. **Sec. 804.** EFFECTIVE DATE. This act takes effect  
21 January 1, 2020.

22 NEW SECTION. **Sec. 805.** CODIFICATION. Sections 101 through 804  
23 of this act constitute a new chapter in Title 11 RCW.

24 NEW SECTION. **Sec. 806.** SEVERABILITY. If any provision of this  
25 act or its application to any person or circumstance is held invalid,  
26 the remainder of the act or the application of the provision to other  
27 persons or circumstances is not affected.

28 NEW SECTION. **Sec. 807.** REPEALERS. The following acts or parts  
29 of acts are each repealed:

- 30 (1) RCW 11.104A.001 (Short title) and 2002 c 345 s 101;  
31 (2) RCW 11.104A.005 (Definitions) and 2002 c 345 s 102;

- 1 (3) RCW 11.104A.010 (Fiduciary duties—General principles) and  
2 2002 c 345 s 103;
- 3 (4) RCW 11.104A.020 (Fiduciary's power to adjust) and 2002 c 345  
4 s 104;
- 5 (5) RCW 11.104A.030 (Judicial control of discretionary powers)  
6 and 2002 c 345 s 105;
- 7 (6) RCW 11.104A.040 (Power to convert to unitrust) and 2006 c 360  
8 s 1 & 2002 c 345 s 106;
- 9 (7) RCW 11.104A.050 (Determination and distribution of net  
10 income) and 2006 c 360 s 2 & 2002 c 345 s 201;
- 11 (8) RCW 11.104A.060 (Distribution to residuary and remainder  
12 beneficiaries) and 2002 c 345 s 202;
- 13 (9) RCW 11.104A.070 (When right to income begins and ends) and  
14 2002 c 345 s 301;
- 15 (10) RCW 11.104A.080 (Apportionment of receipts and disbursements  
16 when decedent dies or income interest begins) and 2002 c 345 s 302;
- 17 (11) RCW 11.104A.090 (Apportionment when income interest ends)  
18 and 2002 c 345 s 303;
- 19 (12) RCW 11.104A.100 (Character of receipts) and 2002 c 345 s  
20 401;
- 21 (13) RCW 11.104A.110 (Distribution from trust or estate) and 2002  
22 c 345 s 402;
- 23 (14) RCW 11.104A.120 (Business and other activities conducted by  
24 trustee) and 2002 c 345 s 403;
- 25 (15) RCW 11.104A.130 (Principal receipts) and 2002 c 345 s 404;
- 26 (16) RCW 11.104A.140 (Rental property) and 2002 c 345 s 405;
- 27 (17) RCW 11.104A.150 (Obligation to pay money) and 2002 c 345 s  
28 406;
- 29 (18) RCW 11.104A.160 (Insurance policies and similar contracts)  
30 and 2002 c 345 s 407;
- 31 (19) RCW 11.104A.170 (Insubstantial allocations not required) and  
32 2002 c 345 s 408;
- 33 (20) RCW 11.104A.180 (Deferred compensation, annuities, and  
34 similar payments) and 2009 c 365 s 1 & 2002 c 345 s 409;
- 35 (21) RCW 11.104A.190 (Liquidating asset) and 2002 c 345 s 410;
- 36 (22) RCW 11.104A.200 (Minerals, water, and other natural  
37 resources) and 2002 c 345 s 411;
- 38 (23) RCW 11.104A.210 (Timber) and 2002 c 345 s 412;
- 39 (24) RCW 11.104A.220 (Property not productive of income) and 2002  
40 c 345 s 413;

1 (25) RCW 11.104A.230 (Derivatives and options) and 2002 c 345 s  
2 414;  
3 (26) RCW 11.104A.240 (Asset-backed securities) and 2002 c 345 s  
4 415;  
5 (27) RCW 11.104A.250 (Disbursements from income) and 2002 c 345 s  
6 501;  
7 (28) RCW 11.104A.260 (Disbursements from principal) and 2002 c  
8 345 s 502;  
9 (29) RCW 11.104A.270 (Transfers from income to principal for  
10 depreciation) and 2002 c 345 s 503;  
11 (30) RCW 11.104A.280 (Transfers from income to reimburse  
12 principal) and 2002 c 345 s 504;  
13 (31) RCW 11.104A.290 (Income taxes) and 2011 c 33 s 1 & 2002 c  
14 345 s 505;  
15 (32) RCW 11.104A.300 (Adjustments between principal and income  
16 because of taxes) and 2002 c 345 s 506;  
17 (33) RCW 11.104A.900 (Uniformity of application and construction)  
18 and 2002 c 345 s 602;  
19 (34) RCW 11.104A.901 (Application of chapter 11.96A RCW) and 2002  
20 c 345 s 603;  
21 (35) RCW 11.104A.904 (Effective date—2002 c 345) and 2002 c 345 s  
22 606;  
23 (36) RCW 11.104A.905 (Application of act to existing trusts and  
24 estates) and 2002 c 345 s 607;  
25 (37) RCW 11.104A.906 (Transitional matters) and 2009 c 365 s 2;  
26 and  
27 (38) RCW 11.104A.907 (Construction—Chapter applicable to state  
28 registered domestic partnerships—2009 c 521) and 2009 c 521 s 40.

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