

Stricken language would be deleted from and underlined language would be added to present law.
Act 1088 of the Regular Session

State of Arkansas
93rd General Assembly
Regular Session, 2021

As Engrossed: H4/7/21
A Bill

HOUSE BILL 1693

By: Representative Maddox

For An Act To Be Entitled

AN ACT TO ENACT THE UNIFORM FIDUCIARY INCOME AND
PRINCIPAL ACT; TO REPEAL THE UNIFORM PRINCIPAL AND
INCOME ACT; AND FOR OTHER PURPOSES.

Subtitle

TO ENACT THE UNIFORM FIDUCIARY INCOME AND
PRINCIPAL ACT; AND TO REPEAL THE UNIFORM
PRINCIPAL AND INCOME ACT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code Title 28, Chapter 70, is repealed.

~~Subchapter 1~~

~~—Definitions and Fiduciary Duties~~

~~28-70-101.—Short title.~~

~~This chapter may be cited as the “Uniform Principal and Income Act.”~~

~~28-70-102.—Definitions.~~

~~In this chapter:~~

~~(1) “Accounting period” means a calendar year unless another 12-month period is selected by a fiduciary. The term includes a portion of a calendar year or other 12-month period that begins when an income interest begins or ends when an income interest ends.~~

~~(2) “Beneficiary” includes, in the case of a decedent’s estate, an heir, legatee, and devisee and, in the case of a trust, an income beneficiary and a remainder beneficiary.~~



~~(3) “Fiduciary” means a personal representative or a trustee. The term includes an executor, administrator, successor personal representative, special administrator, and a person performing substantially the same function.~~

~~(4) “Income” means money or property that a fiduciary receives as current return from a principal asset. The term includes a portion of receipts from a sale, exchange, or liquidation of a principal asset, to the extent provided in § 28-70-401 et seq.~~

~~(5) “Income beneficiary” means a person to whom net income of a trust is or may be payable.~~

~~(6) “Income interest” means the right of an income beneficiary to receive all or part of net income, whether the terms of the trust require it to be distributed or authorize it to be distributed in the trustee’s discretion.~~

~~(7) “Mandatory income interest” means the right of an income beneficiary to receive net income that the terms of the trust require the fiduciary to distribute.~~

~~(8) “Net income” means the total receipts allocated to income during an accounting period minus the disbursements made from income during the period, plus or minus transfers under this chapter to or from income during the period.~~

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

~~(10) “Principal” means property held in trust for distribution to a remainder beneficiary when the trust terminates.~~

~~(11) “Remainder beneficiary” means a person entitled to receive principal when an income interest ends.~~

~~(12) “Terms of a trust” means the manifestation of the intent of a settlor or decedent with respect to the trust, expressed in a manner that admits of its proof in a judicial proceeding, whether by written or spoken words or by conduct.~~

~~(13) “Trustee” includes an original, additional, or successor trustee, whether or not appointed or confirmed by a court.~~

~~28-70-103. Fiduciary duties—General principles.~~

~~(a) In allocating receipts and disbursements to or between principal and income, and with respect to any matter within the scope of § 28-70-201 et seq. and § 28-70-301 et seq., a fiduciary:~~

~~(1) shall administer a trust or estate in accordance with the terms of the trust or the will, even if there is a different provision in this chapter;~~

~~(2) may administer a trust or estate by the exercise of a discretionary power of administration given to the fiduciary by the terms of the trust or the will, even if the exercise of the power produces a result different from a result required or permitted by this chapter;~~

~~(3) shall administer a trust or estate in accordance with this chapter if the terms of the trust or the will do not contain a different provision or do not give the fiduciary a discretionary power of administration; and~~

~~(4) shall add a receipt or charge a disbursement to principal to the extent that the terms of the trust and this chapter do not provide a rule for allocating the receipt or disbursement to or between principal and income.~~

~~(b) In exercising the power to adjust under § 28-70-104(a) or a discretionary power of administration regarding a matter within the scope of this chapter, whether granted by the terms of a trust, a will, or this chapter, a fiduciary shall administer a trust or estate impartially, based on what is fair and reasonable to all of the beneficiaries, except to the extent that the terms of the trust or the will clearly manifest an intention that the fiduciary shall or may favor one or more of the beneficiaries. A determination in accordance with this chapter is presumed to be fair and reasonable to all of the beneficiaries.~~

~~28-70-104. Trustee's power to adjust.~~

~~(a) A trustee may adjust between principal and income to the extent the trustee considers necessary if the trustee invests and manages trust assets as a prudent investor, the terms of the trust describe the amount that may or must be distributed to a beneficiary by referring to the trust's income, and the trustee determines, after applying the rules in § 28-70-103(a), that the trustee is unable to comply with § 28-70-103(b).~~

~~(b) In deciding whether and to what extent to exercise the power conferred by subsection (a), a trustee shall consider all factors relevant to the trust and its beneficiaries, including the following factors to the extent they are relevant:~~

~~(1) the nature, purpose, and expected duration of the trust;~~
~~(2) the intent of the settlor;~~
~~(3) the identity and circumstances of the beneficiaries;~~
~~(4) the needs for liquidity, regularity of income, and preservation and appreciation of capital;~~

~~(5) the assets held in the trust; the extent to which they consist of financial assets, interests in closely held enterprises, tangible and intangible personal property, or real property; the extent to which an asset is used by a beneficiary; and whether an asset was purchased by the trustee or received from the settlor;~~

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

~~(7) whether and to what extent the terms of the trust give the trustee the power to invade principal or accumulate income or prohibit the trustee from invading principal or accumulating income, and the extent to which the trustee has exercised a power from time to time to invade principal or accumulate income;~~

~~(8) the actual and anticipated effect of economic conditions on principal and income and effects of inflation and deflation; and~~

~~(9) the anticipated tax consequences of an adjustment.~~

~~(c) A trustee may not make an adjustment:~~

~~(1) that diminishes the income interest in a trust that requires all of the income to be paid at least annually to a surviving spouse and for which an estate tax or gift tax marital deduction would be allowed, in whole or in part, if the trustee did not have the power to make the adjustment;~~

~~(2) that reduces the actuarial value of the income interest in a trust to which a person transfers property with the intent to qualify for a gift tax exclusion;~~

~~(3) that changes the amount payable to a beneficiary as a fixed annuity or a fixed fraction of the value of the trust assets;~~

~~(4) from any amount that is permanently set aside for charitable purposes under a will or the terms of a trust unless both income and principal are so set aside;~~

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

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

~~(7) if the trustee is a beneficiary of the trust; or~~

~~(8) if the trustee is not a beneficiary, but the adjustment would benefit the trustee directly or indirectly.~~

~~(d) If subsection (c)(5), (6), (7), or (8) applies to a trustee and there is more than one trustee, a cotrustee to whom the provision does not apply may make the adjustment unless the exercise of the power by the remaining trustee or trustees is not permitted by the terms of the trust.~~

~~(e) A trustee may release the entire power conferred by subsection (a) or may release only the power to adjust from income to principal or the power to adjust from principal to income if the trustee is uncertain about whether possessing or exercising the power will cause a result described in subsection (c)(1) through (6) or (c)(8) or if the trustee determines that possessing or exercising the power will or may deprive the trust of a tax benefit or impose a tax burden not described in subsection (c). The release may be permanent or for a specified period, including a period measured by the life of an individual.~~

~~(f) Terms of a trust that limit the power of a trustee to make an adjustment between principal and income do not affect the application of this section unless it is clear from the terms of the trust that the terms are intended to deny the trustee the power of adjustment conferred by subsection (a).~~

~~—Decedent's Estate or Terminating Income Interest~~

~~28-70-201.—Determination and distribution of net income.~~

~~After a decedent dies, in the case of an estate, or after an income interest in a trust ends, the following rules apply:~~

~~(1) A fiduciary of an estate or of a terminating income interest shall determine the amount of net income and net principal receipts received from property specifically given to a beneficiary under the rules in § 28-70-301 et seq., § 28-70-401 et seq., and § 28-70-501 et seq. which apply to trustees and the rules in paragraph (5). The fiduciary shall distribute the net income and net principal receipts to the beneficiary who is to receive the specific property.~~

~~(2) A fiduciary shall determine the remaining net income of a decedent's estate or a terminating income interest under the rules in § 28-70-301 et seq., § 28-70-401 et seq., and § 28-70-501 et seq. which apply to trustees and by:~~

~~(A) including in net income all income from property used to discharge liabilities;~~

~~(B) paying from income or principal, in the fiduciary's discretion, fees of attorneys, accountants, and fiduciaries; court costs and other expenses of administration; and interest on death taxes, but the fiduciary may pay those expenses from income of property passing to a trust for which the fiduciary claims an estate tax marital or charitable deduction only to the extent that the payment of those expenses from income will not cause the reduction or loss of the deduction; and~~

~~(C) paying from principal all other disbursements made or incurred in connection with the settlement of a decedent's estate or the winding up of a terminating income interest, including debts, funeral expenses, disposition of remains, family allowances, and death taxes and related penalties that are apportioned to the estate or terminating income interest by the will, the terms of the trust, or applicable law.~~

~~(3) A fiduciary shall distribute to a beneficiary who receives a pecuniary amount outright the interest or any other amount provided by the will, the terms of the trust, or applicable law from net income determined under paragraph (2) or from principal to the extent that net income is insufficient. If a beneficiary is to receive a pecuniary amount outright from~~

~~a trust after an income interest ends and no interest or other amount is provided for by the terms of the trust or applicable law, the fiduciary shall distribute the interest or other amount to which the beneficiary would be entitled under applicable law if the pecuniary amount were required to be paid under a will.~~

~~(4) A fiduciary shall distribute the net income remaining after distributions required by paragraph (3) in the manner described in § 28-70-202 to all other beneficiaries, including a beneficiary who receives a pecuniary amount in trust, even if the beneficiary holds an unqualified power to withdraw assets from the trust or other presently exercisable general power of appointment over the trust.~~

~~(5) A fiduciary may not reduce principal or income receipts from property described in paragraph (1) because of a payment described in § 28-70-501 or § 28-70-502 to the extent that the will, the terms of the trust, or applicable law requires the fiduciary to make the payment from assets other than the property or to the extent that the fiduciary recovers or expects to recover the payment from a third party. The net income and principal receipts from the property are determined by including all of the amounts the fiduciary receives or pays with respect to the property, whether those amounts accrued or became due before, on, or after the date of a decedent's death or an income interest's terminating event, and by making a reasonable provision for amounts that the fiduciary believes the estate or terminating income interest may become obligated to pay after the property is distributed.~~

~~28-70-202. Distribution to residuary and remainder beneficiaries.~~

~~(a) Each beneficiary described in § 28-70-201(4) is entitled to receive a portion of the net income equal to the beneficiary's fractional interest in undistributed principal assets, using values as of the distribution date. If a fiduciary makes more than one distribution of assets to beneficiaries to whom this section applies, each beneficiary, including one who does not receive part of the distribution, is entitled, as of each distribution date, to the net income the fiduciary has received after the date of death or terminating event or earlier distribution date but has not distributed as of the current distribution date.~~

~~(b) In determining a beneficiary's share of net income, the following~~

~~rules apply:~~

~~(1) The beneficiary is entitled to receive a portion of the net income equal to the beneficiary's fractional interest in the undistributed principal assets immediately before the distribution date, including assets that later may be sold to meet principal obligations.~~

~~(2) The beneficiary's fractional interest in the undistributed principal assets must be calculated without regard to property specifically given to a beneficiary and property required to pay pecuniary amounts not in trust.~~

~~(3) The beneficiary's fractional interest in the undistributed principal assets must be calculated on the basis of the aggregate value of those assets as of the distribution date without reducing the value by any unpaid principal obligation.~~

~~(4) The distribution date for purposes of this section may be the date as of which the fiduciary calculates the value of the assets if that date is reasonably near the date on which assets are actually distributed.~~

~~(c) If a fiduciary does not distribute all of the collected but undistributed net income to each person as of a distribution date, the fiduciary shall maintain appropriate records showing the interest of each beneficiary in that net income.~~

~~(d) A trustee may apply the rules in this section, to the extent that the trustee considers it appropriate, to net gain or loss realized after the date of death or terminating event or earlier distribution date from the disposition of a principal asset if this section applies to the income from the asset.~~

~~Subchapter 3~~

~~—Apportionment at Beginning and End of Income Interest~~

~~28-70-301. When right to income begins and ends.~~

~~(a) An income beneficiary is entitled to net income from the date on which the income interest begins. An income interest begins on the date specified in the terms of the trust or, if no date is specified, on the date an asset becomes subject to a trust or successive income interest.~~

~~(b) An asset becomes subject to a trust:~~

~~(1) on the date it is transferred to the trust in the case of an~~

~~asset that is transferred to a trust during the transferor's life;~~

~~(2) on the date of a testator's death in the case of an asset that becomes subject to a trust by reason of a will, even if there is an intervening period of administration of the testator's estate; or~~

~~(3) on the date of an individual's death in the case of an asset that is transferred to a fiduciary by a third party because of the individual's death.~~

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

~~(d) An income interest ends on the day before an income beneficiary dies or another terminating event occurs, or on the last day of a period during which there is no beneficiary to whom a trustee may distribute income.~~

~~28-70-302. Apportionment of receipts and disbursements when decedent dies or income interest begins.~~

~~(a) A trustee shall allocate an income receipt or disbursement other than one to which § 28-70-201(1) applies to principal if its due date occurs before a decedent dies in the case of an estate or before an income interest begins in the case of a trust or successive income interest.~~

~~(b) A trustee shall allocate an income receipt or disbursement to income if its due date occurs on or after the date on which a decedent dies or an income interest begins and it is a periodic due date. An income receipt or disbursement must be treated as accruing from day to day if its due date is not periodic or it has no due date. The portion of the receipt or disbursement accruing before the date on which a decedent dies or an income interest begins must be allocated to principal, and the balance must be allocated to income.~~

~~(c) An item of income or an obligation is due on the date the payer is required to make a payment. If a payment date is not stated, there is no due date for the purposes of this chapter. Distributions to shareholders or other owners from an entity to which § 28-70-401 applies are deemed to be due on the date fixed by the entity for determining who is entitled to receive the distribution or, if no date is fixed, on the declaration date for the distribution. A due date is periodic for receipts or disbursements that must~~

~~be paid at regular intervals under a lease or an obligation to pay interest or if an entity customarily makes distributions at regular intervals.~~

~~28-70-303.—Apportionment when income interest ends.~~

~~(a) In this section, “undistributed income” means net income received before the date on which an income interest ends. The term does not include an item of income or expense that is due or accrued or net income that has been added or is required to be added to principal under the terms of the trust.~~

~~(b) When a mandatory income interest ends, the trustee shall pay to a mandatory income beneficiary who survives that date, or the estate of a deceased mandatory income beneficiary whose death causes the interest to end, the beneficiary’s share of the undistributed income that is not disposed of under the terms of the trust unless the beneficiary has an unqualified power to revoke more than 5 percent of the trust immediately before the income interest ends. In the latter case, the undistributed income from the portion of the trust that may be revoked must be added to principal.~~

~~(c) When a trustee’s obligation to pay a fixed annuity or a fixed fraction of the value of the trust’s assets ends, the trustee shall prorate the final payment if and to the extent required by applicable law to accomplish a purpose of the trust or its settlor relating to income, gift, estate, or other tax requirements.~~

~~Subchapter 4~~

~~—Allocation of Receipts During Administration of Trust~~

~~Part 1~~

~~—Receipts from Entities~~

~~28-70-401.—Character of receipts.~~

~~(a) In this section, “entity” means a corporation, partnership, limited liability company, regulated investment company, real estate investment trust, common trust fund, or any other organization in which a trustee has an interest other than a trust or estate to which § 28-70-402 applies, a business or activity to which § 28-70-403 applies, or an asset-backed security to which § 28-70-415 applies.~~

~~(b) Except as otherwise provided in this section, a trustee shall allocate to income money received from an entity.~~

~~(c) A trustee shall allocate the following receipts from an entity to principal:~~

~~(1) property other than money;~~

~~(2) money received in one distribution or a series of related distributions in exchange for part or all of a trust's interest in the entity;~~

~~(3) money received in total or partial liquidation of the entity; and~~

~~(4) money received from an entity that is a regulated investment company or a real estate investment trust if the money distributed is a capital gain dividend for federal income tax purposes.~~

~~(d) Money is received in partial liquidation:~~

~~(1) to the extent that the entity, at or near the time of a distribution, indicates that it is a distribution in partial liquidation; or~~

~~(2) if the total amount of money and property received in a distribution or series of related distributions is greater than 20 percent of the entity's gross assets, as shown by the entity's year-end financial statements immediately preceding the initial receipt.~~

~~(e) Money is not received in partial liquidation, nor may it be taken into account under subsection (d)(2), to the extent that it does not exceed the amount of income tax that a trustee or beneficiary must pay on taxable income of the entity that distributes the money.~~

~~(f) A trustee may rely upon a statement made by an entity about the source or character of a distribution if the statement is made at or near the time of distribution by the entity's board of directors or other person or group of persons authorized to exercise powers to pay money or transfer property comparable to those of a corporation's board of directors.~~

~~28-70-402. Distribution from trust or estate.~~

~~A trustee shall allocate to income an amount received as a distribution of income from a trust or an estate in which the trust has an interest other than a purchased interest and shall allocate to principal an amount received as a distribution of principal from such a trust or estate. If a trustee purchases an interest in a trust that is an investment entity, or a decedent~~

~~or donor transfers an interest in such a trust to a trustee, § 28-70-401 or § 28-70-415 applies to a receipt from the trust.~~

~~28-70-403.—Business and other activities conducted by trustee.~~

~~(a)—If a trustee who conducts a business or other activity determines that it is in the best interest of all the beneficiaries to account separately for the business or activity instead of accounting for it as part of the trust's general accounting records, the trustee may maintain separate accounting records for its transactions, whether or not its assets are segregated from other trust assets.~~

~~(b)—A trustee who accounts separately for a business or other activity may determine the extent to which its net cash receipts must be retained for working capital, the acquisition or replacement of fixed assets, and other reasonably foreseeable needs of the business or activity, and the extent to which the remaining net cash receipts are accounted for as principal or income in the trust's general accounting records. If a trustee sells assets of the business or other activity, other than in the ordinary course of the business or activity, the trustee shall account for the net amount received as principal in the trust's general accounting records to the extent the trustee determines that the amount received is no longer required in the conduct of the business.~~

~~(c)—Activities for which a trustee may maintain separate accounting records include:~~

- ~~(1)—retail, manufacturing, service, and other traditional business activities;~~
- ~~(2)—farming;~~
- ~~(3)—raising and selling livestock and other animals;~~
- ~~(4)—management of rental properties;~~
- ~~(5)—extraction of minerals and other natural resources;~~
- ~~(6)—timber operations; and~~
- ~~(7)—activities to which § 28-70-414 applies.~~

~~Part 2~~

~~—Receipts Not Normally Apportioned~~

~~28-70-404.—Principal receipts.~~

~~A trustee shall allocate to principal:~~

~~(1) to the extent not allocated to income under this chapter, assets received from a transferor during the transferor's lifetime, a decedent's estate, a trust with a terminating income interest, or a payer under a contract naming the trust or its trustee as beneficiary;~~

~~(2) money or other property received from the sale, exchange, liquidation, or change in form of a principal asset, including realized profit, subject to this subchapter;~~

~~(3) amounts recovered from third parties to reimburse the trust because of disbursements described in § 28-70-502(a)(7) or for other reasons to the extent not based on the loss of income;~~

~~(4) proceeds of property taken by eminent domain, but a separate award made for the loss of income with respect to an accounting period during which a current income beneficiary had a mandatory income interest is income;~~

~~(5) net income received in an accounting period during which there is no beneficiary to whom a trustee may or must distribute income; and~~

~~(6) other receipts as provided in Part 3.~~

~~28-70-405.—Rental property.~~

~~To the extent that a trustee accounts for receipts from rental property pursuant to this section, the trustee shall allocate to income an amount received as rent of real or personal property, including an amount received for cancellation or renewal of a lease. An amount received as a refundable deposit, including a security deposit or a deposit that is to be applied as rent for future periods, must be added to principal and held subject to the terms of the lease and is not available for distribution to a beneficiary until the trustee's contractual obligations have been satisfied with respect to that amount.~~

~~28-70-406.—Obligation to pay money.~~

~~(a) An amount received as interest, whether determined at a fixed, variable, or floating rate, on an obligation to pay money to the trustee, including an amount received as consideration for prepaying principal, must be allocated to income without any provision for amortization of premium.~~

~~(b) A trustee shall allocate to principal an amount received from the sale, redemption, or other disposition of an obligation to pay money to the~~

~~trustee more than one year after it is purchased or acquired by the trustee, including an obligation whose purchase price or value when it is acquired is less than its value at maturity. If the obligation matures within one year after it is purchased or acquired by the trustee, an amount received in excess of its purchase price or its value when acquired by the trust must be allocated to income.~~

~~(c) This section does not apply to an obligation to which § 28-70-409, § 28-70-410, § 28-70-411, § 28-70-412, § 28-70-414, or § 28-70-415 applies.~~

~~28-70-407. Insurance policies and similar contracts.~~

~~(a) Except as otherwise provided in subsection (b), a trustee shall allocate to principal the proceeds of a life insurance policy or other contract in which the trust or its trustee is named as beneficiary, including a contract that insures the trust or its trustee against loss for damage to, destruction of, or loss of title to a trust asset. The trustee shall allocate dividends on an insurance policy to income if the premiums on the policy are paid from income, and to principal if the premiums are paid from principal.~~

~~(b) A trustee shall allocate to income proceeds of a contract that insures the trustee against loss of occupancy or other use by an income beneficiary, loss of income, or, subject to § 28-70-403, loss of profits from a business.~~

~~(c) This section does not apply to a contract to which § 28-70-409 applies.~~

~~Part 3~~

~~— Receipts Normally Apportioned~~

~~28-70-408. Insubstantial allocations not required.~~

~~If a trustee determines that an allocation between principal and income required by § 28-70-409, § 28-70-410, § 28-70-411, § 28-70-412, or § 28-70-415 is insubstantial, the trustee may allocate the entire amount to principal unless one of the circumstances described in § 28-70-104(e) applies to the allocation. This power may be exercised by a cotrustee in the circumstances described in § 28-70-104(d) and may be released for the reasons and in the manner described in § 28-70-104(e). An allocation is presumed to be insubstantial if:~~

~~(1) the amount of the allocation would increase or decrease net income in an accounting period, as determined before the allocation, by less than 10 percent; or~~

~~(2) the value of the asset producing the receipt for which the allocation would be made is less than 10 percent of the total value of the trust's assets at the beginning of the accounting period.~~

~~28-70-409. Deferred compensation, annuities, and similar payments.~~

~~(a) In this section:~~

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

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

~~(b) To the extent that a payment is characterized as interest, a dividend, or a payment made in lieu of interest or a dividend, a trustee shall allocate the payment to income. The trustee shall allocate to principal the balance of the payment and any other payment received in the same accounting period that is not characterized as interest, a dividend, or an equivalent payment.~~

~~(c) If no part of a payment is characterized as interest, a dividend, or an equivalent payment, and all or part of the payment is required to be made, a trustee shall allocate to income 10 percent of the part that is required to be made during the accounting period and the balance to principal. If no part of a payment is required to be made or the payment received is the entire amount to which the trustee is entitled, the trustee shall allocate the entire payment to principal. For purposes of this subsection, a payment is not "required to be made" to the extent that it is made because the trustee exercises a right of withdrawal.~~

~~(d) Except as otherwise provided in subsection (c), subsections (f) and (g) apply, and subsections (b) and (c) do not apply, in determining the~~

~~allocation of a payment made from a separate fund to:~~

~~(1) a trust to which an election to qualify for a marital deduction under Section 2056(b)(7) of the Internal Revenue Code of 1986, 26 U.S.C. § 2056(b)(7), as in effect January 1, 2011, has been made; or~~

~~(2) a trust that qualifies for the marital deduction under Section 2056(b)(5) of the Internal Revenue Code of 1986, 26 U.S.C. § 2056(b)(5), as in effect January 1, 2011.~~

~~(e) Subsections (d), (f), and (g) do not apply if and to the extent that the series of payments would, without the application of subsection (d), qualify for the marital deduction under Section 2056(b)(7)(C) of the Internal Revenue Code of 1986, 26 U.S.C. § 2056(b)(7)(C), as in effect January 1, 2011.~~

~~(f) A trustee shall determine the internal income of each separate fund for the accounting period as if the separate fund were a trust subject to this chapter. Upon request of the surviving spouse, the trustee shall demand that the person administering the separate fund distribute the internal income to the trust. The trustee shall allocate a payment from the separate fund to income to the extent of the internal income of the separate fund and distribute that amount to the surviving spouse. The trustee shall allocate the balance of the payment to principal. Upon request of the surviving spouse, the trustee shall allocate principal to income to the extent the internal income of the separate fund exceeds payments made from the separate fund to the trust during the accounting period.~~

~~(g) If a trustee cannot determine the internal income of a separate fund but can determine the value of the separate fund, the internal income of the separate fund is deemed to equal three percent of the fund's value, according to the most recent statement of value preceding the beginning of the accounting period. If the trustee can determine neither the internal income of the separate fund nor the fund's value, the internal income of the fund is deemed to equal the product of the interest rate and the present value of the expected future payments, as determined under Section 7520 of the Internal Revenue Code of 1986, 26 U.S.C. § 7520, as in effect January 1, 2011, for the month preceding the accounting period for which the computation is made.~~

~~(h) This section does not apply to a payment to which § 28-70-410 applies.~~

~~28-70-410.—Liquidating asset.~~

~~(a) In this section, “liquidating asset” means an asset whose value will diminish or terminate because the asset is expected to produce receipts for a period of limited duration. The term includes a leasehold, patent, copyright, royalty right, and right to receive payments during a period of more than one year under an arrangement that does not provide for the payment of interest on the unpaid balance. The term does not include a payment subject to § 28-70-409, resources subject to § 28-70-411, timber subject to § 28-70-412, an activity subject to § 28-70-414, an asset subject to § 28-70-415, or any asset for which the trustee establishes a reserve for depreciation under § 28-70-503.~~

~~(b) A trustee shall allocate to income 10 percent of the receipts from a liquidating asset and the balance to principal.~~

~~28-70-411.—Minerals, water, and other natural resources.~~

~~(a) To the extent that a trustee accounts for receipts from an interest in minerals or other natural resources pursuant to this section, the trustee shall allocate them as follows:~~

~~(1) If received as nominal delay rental or nominal annual rent on a lease, a receipt must be allocated to income.~~

~~(2) If received from a production payment, a receipt must be allocated to income if and to the extent that the agreement creating the production payment provides a factor for interest or its equivalent. The balance must be allocated to principal.~~

~~(3) If an amount received as a royalty, shut-in well payment, take-or-pay payment, bonus, or delay rental is more than nominal, 90 percent must be allocated to principal and the balance to income.~~

~~(4) If an amount is received from a working interest or any other interest not provided for in paragraph (1), (2), or (3), 90 percent of the net amount received must be allocated to principal and the balance to income.~~

~~(b) An amount received on account of an interest in water that is renewable must be allocated to income. If the water is not renewable, 90 percent of the amount must be allocated to principal and the balance to income.~~

~~(c) This chapter applies whether or not a decedent or donor was extracting minerals, water, or other natural resources before the interest became subject to the trust.~~

~~(d) If a trust owns an interest in minerals, water, or other natural resources on January 1, 2000, the trustee may allocate receipts from the interest as provided in this chapter or in the manner used by the trustee before January 1, 2000. If the trust acquires an interest in minerals, water, or other natural resources after January 1, 2000, the trustee shall allocate receipts from the interest as provided in this chapter.~~

~~28-70-412. Timber.~~

~~(a) To the extent that a trustee accounts for receipts from the sale of timber and related products pursuant to this section, the trustee shall allocate the net receipts:~~

~~(1) to income to the extent that the amount of timber removed from the land does not exceed the rate of growth of the timber during the accounting periods in which a beneficiary has a mandatory income interest;~~

~~(2) to principal to the extent that the amount of timber removed from the land exceeds the rate of growth of the timber or the net receipts are from the sale of standing timber;~~

~~(3) to or between income and principal if the net receipts are from the lease of timberland or from a contract to cut timber from land owned by a trust, by determining the amount of timber removed from the land under the lease or contract and applying the rules in paragraphs (1) and (2); or~~

~~(4) to principal to the extent that advance payments, bonuses, and other payments are not allocated pursuant to paragraph (1), (2), or (3).~~

~~(b) In determining net receipts to be allocated pursuant to subsection (a), a trustee shall deduct and transfer to principal a reasonable amount for depletion.~~

~~(c) This chapter applies whether or not a decedent or transferor was harvesting timber from the property before it became subject to the trust.~~

~~(d) If a trust owns an interest in timberland on January 1, 2000, the trustee may allocate net receipts from the sale of timber and related products as provided in this chapter or in the manner used by the trustee before January 1, 2000. If the trust acquires an interest in timberland after January 1, 2000, the trustee shall allocate net receipts from the sale of~~

~~timber and related products as provided in this chapter.~~

~~28-70-413. Property not productive of income.~~

~~(a) If a marital deduction is allowed for all or part of a trust whose assets consist substantially of property that does not provide the surviving spouse with sufficient income from or use of the trust assets, and if the amounts that the trustee transfers from principal to income under § 28-70-104 and distributes to the spouse from principal pursuant to the terms of the trust are insufficient to provide the spouse with the beneficial enjoyment required to obtain the marital deduction, the spouse may require the trustee to make property productive of income, convert property within a reasonable time, or exercise the power conferred by § 28-70-104(a). The trustee may decide which action or combination of actions to take.~~

~~(b) In cases not governed by subsection (a), proceeds from the sale or other disposition of an asset are principal without regard to the amount of income the asset produces during any accounting period.~~

~~28-70-414. Derivatives and options.~~

~~(a) In this section, "derivative" means a contract or financial instrument or a combination of contracts and financial instruments which gives a trust the right or obligation to participate in some or all changes in the price of a tangible or intangible asset or group of assets, or changes in a rate, an index of prices or rates, or other market indicator for an asset or a group of assets.~~

~~(b) To the extent that a trustee accounts for transactions in derivatives pursuant to this section, the trustee shall allocate to principal receipts from and disbursements made in connection with those transactions.~~

~~(c) If a trustee grants an option to buy property from the trust, whether or not the trust owns the property when the option is granted, grants an option that permits another person to sell property to the trust, or acquires an option to buy property for the trust or an option to sell an asset owned by the trust, and the trustee or other owner of the asset is required to deliver the asset if the option is exercised, an amount received for granting the option must be allocated to principal. An amount paid to acquire the option must be paid from principal. A gain or loss realized upon the exercise of an option, including an option granted to a settlor of the~~

~~trust for services rendered, must be allocated to principal.~~

~~28-70-415.—Asset-backed securities.~~

~~(a)—In this section, “asset-backed security” means an asset whose value is based upon the right it gives the owner to receive distributions from the proceeds of financial assets that provide collateral for the security. The term includes an asset that gives the owner the right to receive from the collateral financial assets only the interest or other current return or only the proceeds other than interest or current return. The term does not include an asset to which § 28-70-401 or § 28-70-409 applies.~~

~~(b)—If a trust receives a payment from interest or other current return and from other proceeds of the collateral financial assets, the trustee shall allocate to income the portion of the payment which the payer identifies as being from interest or other current return and shall allocate the balance of the payment to principal.~~

~~(c)—If a trust receives one or more payments in exchange for the trust’s entire interest in an asset-backed security in one accounting period, the trustee shall allocate the payments to principal. If a payment is one of a series of payments that will result in the liquidation of the trust’s interest in the security over more than one accounting period, the trustee shall allocate 10 percent of the payment to income and the balance to principal.~~

~~Subchapter 5~~

~~—Allocation of Disbursements During Administration of Trust~~

~~28-70-501.—Disbursements from income.~~

~~A trustee shall make the following disbursements from income to the extent that they are not disbursements to which § 28-70-201(2)(B) or (C) applies:~~

~~(1)—one half of the regular compensation of the trustee and of any person providing investment advisory or custodial services to the trustee;~~

~~(2)—one half of all expenses for accountings, judicial proceedings, or other matters that involve both the income and remainder~~

interests;

~~(3) all of the other ordinary expenses incurred in connection with the administration, management, or preservation of trust property and the distribution of income, including interest, ordinary repairs, regularly recurring taxes assessed against principal, and expenses of a proceeding or other matter that concerns primarily the income interest; and~~

~~(4) recurring premiums on insurance covering the loss of a principal asset or the loss of income from or use of the asset.~~

~~28-70-502. Disbursements from principal.~~

~~(a) A trustee shall make the following disbursements from principal:~~

~~(1) the remaining one-half of the disbursements described in § 28-70-501(1) and (2);~~

~~(2) all of the trustee's compensation calculated on principal as a fee for acceptance, distribution, or termination, and disbursements made to prepare property for sale;~~

~~(3) payments on the principal of a trust debt;~~

~~(4) expenses of a proceeding that concerns primarily principal, including a proceeding to construe the trust or to protect the trust or its property;~~

~~(5) premiums paid on a policy of insurance not described in § 28-70-501(4) of which the trust is the owner and beneficiary;~~

~~(6) estate, inheritance, and other transfer taxes, including penalties, apportioned to the trust; and~~

~~(7) disbursements related to environmental matters, including reclamation, assessing environmental conditions, remedying and removing environmental contamination, monitoring remedial activities and the release of substances, preventing future releases of substances, collecting amounts from persons liable or potentially liable for the costs of those activities, penalties imposed under environmental laws or regulations and other payments made to comply with those laws or regulations, statutory or common law claims by third parties, and defending claims based on environmental matters.~~

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

~~28-70-503.—Transfers from income to principal for depreciation.~~

~~(a)—In this section, “depreciation” means a reduction in value due to wear, tear, decay, corrosion, or gradual obsolescence of a fixed asset having a useful life of more than one year.~~

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

~~(1)—of that portion of real property used or available for use by a beneficiary as a residence or of tangible personal property held or made available for the personal use or enjoyment of a beneficiary;~~

~~(2)—during the administration of a decedent’s estate; or~~

~~(3)—under this section if the trustee is accounting under § 28-70-403 for the business or activity in which the asset is used.~~

~~(c)—An amount transferred to principal need not be held as a separate fund.~~

~~28-70-504.—Transfers from income to reimburse principal.~~

~~(a)—If a trustee makes or expects to make a principal disbursement described in this section, the trustee may transfer an appropriate amount from income to principal in one or more accounting periods to reimburse principal or to provide a reserve for future principal disbursements.~~

~~(b)—Principal disbursements to which subsection (a) applies include the following, but only to the extent that the trustee has not been and does not expect to be reimbursed by a third party:~~

~~(1)—an amount chargeable to income but paid from principal because it is unusually large, including extraordinary repairs;~~

~~(2)—a capital improvement to a principal asset, whether in the form of changes to an existing asset or the construction of a new asset, including special assessments;~~

~~(3)—disbursements made to prepare property for rental, including tenant allowances, leasehold improvements, and broker’s commissions;~~

~~(4)—periodic payments on an obligation secured by a principal asset to the extent that the amount transferred from income to principal for depreciation is less than the periodic payments; and~~

~~(5)—disbursements described in § 28-70-502(a)(7).~~

~~(c) If the asset whose ownership gives rise to the disbursements becomes subject to a successive income interest after an income interest ends, a trustee may continue to transfer amounts from income to principal as provided in subsection (a).~~

~~28-70-505.—Income taxes.~~

~~(a) A tax required to be paid by a trustee based on receipts allocated to income must be paid from income.~~

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

~~(c) A tax required to be paid by a trustee on the trust's share of an entity's taxable income must be paid:~~

~~(1) from income to the extent that receipts from the entity are allocated only to income;~~

~~(2) from principal to the extent that receipts from the entity are allocated only to principal;~~

~~(3) proportionately from principal and income to the extent that receipts from the entity are allocated to both income and principal; and~~

~~(4) from principal to the extent that the tax exceeds the total receipts from the entity.~~

~~(d) After applying subsections (a) through (c), the trustee shall adjust income or principal receipts to the extent that the trust's taxes are reduced because the trust receives a deduction for payments made to a beneficiary.~~

~~28-70-506.—Adjustments between principal and income because of taxes.~~

~~(a) A fiduciary may make adjustments between principal and income to offset the shifting of economic interests or tax benefits between income beneficiaries and remainder beneficiaries which arise from:~~

~~(1) elections and decisions, other than those described in subsection (b), that the fiduciary makes from time to time regarding tax matters;~~

~~(2) an income tax or any other tax that is imposed upon the fiduciary or a beneficiary as a result of a transaction involving or a distribution from the estate or trust; or~~

~~(3) the ownership by an estate or trust of an interest in an entity whose taxable income, whether or not distributed, is includable in the taxable income of the estate, trust, or a beneficiary.~~

~~(b) If the amount of an estate tax marital deduction or charitable contribution deduction is reduced because a fiduciary deducts an amount paid from principal for income tax purposes instead of deducting it for estate tax purposes, and as a result estate taxes paid from principal are increased and income taxes paid by an estate, trust, or beneficiary are decreased, each estate, trust, or beneficiary that benefits from the decrease in income tax shall reimburse the principal from which the increase in estate tax is paid. The total reimbursement must equal the increase in the estate tax to the extent that the principal used to pay the increase would have qualified for a marital deduction or charitable contribution deduction but for the payment. The proportionate share of the reimbursement for each estate, trust, or beneficiary whose income taxes are reduced must be the same as its proportionate share of the total decrease in income tax. An estate or trust shall reimburse principal from income.~~

~~Subchapter 6~~

~~—Miscellaneous Provisions~~

~~28-70-601. Uniformity of application and construction.~~

~~In applying and construing this Uniform Act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among States that enact it.~~

~~28-70-602. Severability clause.~~

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

~~28-70-603. [Reserved.]~~

~~28-70-604. Effective date.~~

~~This chapter takes effect on January 1, 2000.~~

~~28-70-605. Application of chapter to existing trusts and estates.~~

~~This chapter applies to every trust or decedent's estate existing on January 1, 2000, except as otherwise expressly provided in the will or terms of the trust or in this chapter.~~

~~28-70-606. Transitional matters.~~

~~Section 28-70-409, as amended by this act, applies to a trust described in § 28-70-409(d) on and after the following dates:~~

~~(1) If the trust is not funded as of July 27, 2011, the date of the decedent's death.~~

~~(2) If the trust is initially funded in the calendar year beginning January 1, 2011, the date of the decedent's death.~~

~~(3) If the trust is not described in paragraph (1) or (2), January 1, 2012.~~

SECTION 2. Arkansas Code Title 28 is amended to add an additional chapter to read as follows:

Chapter 77

UNIFORM FIDUCIARY INCOME AND PRINCIPAL ACT

Subchapter 1 – General Provisions

28-77-101. Short title.

This chapter may be cited as the "Uniform Fiduciary Income and Principal Act".

28-77-102. Definitions.

In this chapter:

(1) "Accounting period" means a calendar year, unless a fiduciary selects another period of 12 calendar months or approximately 12 calendar months. The term includes a part of a calendar year or another period of 12 calendar months or approximately 12 calendar months which begins when an income interest begins or ends when an income interest ends.

(2) "Asset-backed security" means a security that is serviced

primarily by the cash flows of a discrete pool of fixed or revolving receivables or other financial assets that by their terms convert into cash within a finite time. The term includes rights or other assets that ensure the servicing or timely distribution of proceeds to the holder of the asset-backed security. The term does not include an asset to which § 28-77-401, § 28-77-409, or § 28-77-414 applies.

(3) “Beneficiary” includes:

(A) for a trust:

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

(ii) a remainder beneficiary; and

(iii) any other successor beneficiary; and

(B) for an estate, an heir, legatee, and devisee.

(4) “Court” means a probate court.

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

(6) “Distribution” means a payment or transfer by a fiduciary to a beneficiary in the beneficiary’s capacity as a beneficiary, made under the terms of the trust, without consideration other than the beneficiary’s right to receive the payment or transfer under the terms of the trust.

“Distribute”, “distributed”, and “distributee” have corresponding meanings.

(7) “Estate” means a decedent’s estate. The term includes the property of the decedent as the estate is originally constituted and the property of the estate as it exists at any time during administration.

(8) “Fiduciary” includes a trustee, trust director determined under § 28-76-102(9), personal representative, and person acting under a delegation from a fiduciary. The term includes a person that holds property for a successor beneficiary whose interest may be affected by an allocation of receipts and expenditures between income and principal. If there are two or more co-fiduciaries, the term includes all co-fiduciaries acting under the terms of the trust and applicable law.

(9) “Income” means money or other property a fiduciary receives as current return from principal. The term includes a part of receipts from a sale, exchange, or liquidation of a principal asset, to the extent provided in § 28-77-401 et seq.

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

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

(A) for a trust:

(i) a qualified beneficiary determined under § 28-73-103(14);

(ii) a settlor of the trust; or

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

(B) for an estate, a beneficiary;

(C) a spouse, parent, brother, sister, or issue of an individual described in subdivisions (11)(A) or (B);

(D) a corporation, partnership, limited liability company, or other entity in which persons described in subdivisions (11)(A) through (C) of this section, in the aggregate, have voting control; or

(E) an employee of a person described in subdivisions (11)(A), (B), (C), or (D) of this section.

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

(13) "Net income" means the total allocations during an accounting period to income under the terms of a trust and this chapter minus the disbursements during the period, other than distributions, allocated to income under the terms of the trust and this chapter. To the extent the trust is a unitrust under § 28-77-301 et seq, the term means the unitrust amount determined under § 28-77-301 et seq. The term includes an adjustment from principal to income under § 28-77-203. The term does not include an adjustment from income to principal under § 28-77-203.

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

(15) "Personal representative" means an executor, administrator, successor personal representative, special administrator, or person that

performs substantially the same function with respect to an estate under the law governing the person's status.

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

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

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

(19) "Special tax benefit" means:

(A) exclusion of a transfer to a trust from gifts described in Section 2503(b) of the Internal Revenue Code of 1986, as amended, 26 U.S.C. Section 2503(b), as amended, because of the qualification of an income interest in the trust as a present interest in property;

(B) status as a qualified subchapter S trust described in Section 1361(d)(3) of the Internal Revenue Code of 1986, as amended, 26 U.S.C. Section 1361(d)(3), as amended, at a time the trust holds stock of an S corporation described in Section 1361(a)(1) of the Internal Revenue Code of 1986, as amended, 26 U.S.C. Section 1361(a)(1), as amended;

(C) an estate or gift tax marital deduction for a transfer to a trust under Section 2056 or 2523 of the Internal Revenue Code of 1986, as amended, 26 U.S.C. Section 2056 or 2523, as amended, which depends or depended in whole or in part on the right of the settlor's spouse to receive the net income of the trust;

(D) exemption in whole or in part of a trust from the federal generation-skipping transfer tax imposed by Section 2601 of the Internal Revenue Code of 1986, as amended, 26 U.S.C. Section 2601, as amended, because the trust was irrevocable on September 25, 1985, if there is any possibility that:

(i) a taxable distribution, as defined in Section 2612(b) of the Internal Revenue Code of 1986, as amended, 26 U.S.C. Section 2612(b), as amended, could be made from the trust; or

(ii) a taxable termination, as defined in Section 2612(a) of the Internal Revenue Code of 1986, as amended, 26 U.S.C. Section 2612(a), as amended, could occur with respect to the trust; or

(E) an inclusion ratio, as defined in Section 2642(a) of the Internal Revenue Code of 1986, as amended, 26 U.S.C. Section 2642(a), as amended, of the trust which is less than one, if there is any possibility that:

(i) a taxable distribution, as defined in Section 2612(b) of the Internal Revenue Code of 1986, as amended, 26 U.S.C. Section 2612(b), as amended, could be made from the trust; or

(ii) a taxable termination, as defined in Section 2612(a) of the Internal Revenue Code of 1986, as amended, 26 U.S.C. § 2612(a), as amended, could occur with respect to the trust.

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

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

(22) "Terms of a trust" means:

(A) except as otherwise provided in subdivision (22)(B) of this section, the manifestation of the settlor's intent regarding a trust's provisions as:

(i) expressed in the trust instrument; or

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

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

(i) a trustee or trust director in accordance with applicable law;

(ii) court order; or

(iii) a nonjudicial settlement agreement under § 28-73-111; or

(C) for an estate, a will.

(23) "Trust":

(A) includes:

(i) an express trust, private or charitable, with

additions to the trust, wherever and however created; and

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

(B) does not include:

(i) a constructive trust;

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

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

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

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

28-77-103. Scope.

This chapter applies to a trust or estate.

28-77-104. Governing law.

Except as otherwise provided in the terms of a trust or this chapter, this chapter applies when this state is the principal place of administration of a trust or estate. By accepting the trusteeship of a trust having its principal place of administration in this state or by moving the principal place of administration of a trust to this state, the trustee submits to the application of this chapter to any matter within the scope of this chapter involving the trust.

Subchapter 2 – Fiduciary Duties and Judicial Review

28-77-201. Fiduciary duties – General principles.

(a) In making an allocation or determination or exercising discretion under this chapter, a fiduciary shall:

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

(2) administer a trust or estate impartially, except to the extent the terms of the trust manifest an intent that the fiduciary shall or may favor one or more beneficiaries;

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

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

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

(c) A fiduciary shall:

(1) add a receipt to principal, to the extent neither the terms of the trust nor this chapter allocates the receipt between income and principal; and

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

(d) A fiduciary may exercise the power to adjust under § 28-77-203, convert an income trust to a unitrust under § 28-77-303(a)(1), change the percentage or method used to calculate a unitrust amount under § 28-77-303(a)(2), or convert a unitrust to an income trust under § 28-77-303(a)(3), if the fiduciary determines the exercise of the power will assist the fiduciary to administer the trust or estate impartially.

(e) Factors the fiduciary must consider in making the determination under subsection (d) of this section include:

- (1) the terms of the trust;
- (2) the nature, distribution standards, and expected duration of the trust;
- (3) the effect of the allocation rules, including specific adjustments between income and principal, under § 28-77-401 et seq. through § 28-77-701 et seq.;
- (4) the desirability of liquidity and regularity of income;
- (5) the desirability of the preservation and appreciation of principal;
- (6) the extent to which an asset is used or may be used by a beneficiary;
- (7) the increase or decrease in the value of principal assets, reasonably determined by the fiduciary;
- (8) whether and to what extent the terms of the trust give the fiduciary power to accumulate income or invade principal or prohibit the fiduciary from accumulating income or invading principal;
- (9) the extent to which the fiduciary has accumulated income or invaded principal in preceding accounting periods;
- (10) the effect of current and reasonably expected economic conditions; and
- (11) the reasonably expected tax consequences of the exercise of the power.

28-77-202. Judicial review of exercise of discretionary power.

(a) In this section, "fiduciary decision" means:

- (1) a fiduciary's allocation between income and principal or other determination regarding income and principal required or authorized by the terms of the trust or this chapter;
- (2) the fiduciary's exercise or nonexercise of a discretionary power regarding income and principal granted by the terms of the trust or this chapter, including the power to adjust under § 28-77-203, convert an income trust to a unitrust under § 28-77-303(a)(1), change the percentage or method used to calculate a unitrust amount under § 28-77-303(a)(2), or convert a unitrust to an income trust under § 28-77-303(a)(3); or
- (3) the fiduciary's implementation of a decision described in subdivisions (a)(1) or (2) of this section.

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

(c) If the court determines that a fiduciary decision was an abuse of the fiduciary's discretion, the court may order a remedy authorized by law, including § 28-73-1001. To place the beneficiaries in the positions the beneficiaries would have occupied if there had not been an abuse of the fiduciary's discretion, the court may order:

(1) the fiduciary to exercise or refrain from exercising the power to adjust under § 28-77-203;

(2) the fiduciary to exercise or refrain from exercising the power to convert an income trust to a unitrust under § 28-77-303(a)(1), change the percentage or method used to calculate a unitrust amount under § 28-77-303(a)(2), or convert a unitrust to an income trust under § 28-77-303(a)(3);

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

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

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

(d) On petition by a fiduciary for instruction, the court may determine whether a proposed fiduciary decision will result in an abuse of the fiduciary's discretion. If the petition describes the proposed decision, contains sufficient information to inform the beneficiary of the reasons for making the proposed decision and the facts on which the fiduciary relies, and explains how the beneficiary will be affected by the proposed decision, a beneficiary that opposes the proposed decision has the burden to establish that it will result in an abuse of the fiduciary's discretion.

28-77-203. Fiduciary's power to adjust.

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

(b) This section does not create a duty to exercise or consider the power to adjust under subsection (a) of this section or to inform a

beneficiary about the applicability of this section.

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

(d) In deciding whether and to what extent to exercise the power to adjust under subsection (a) of this section, a fiduciary shall consider all factors the fiduciary considers relevant, including relevant factors in § 28-77-201(e) and the application of §§ 28-77-401(i), 28-77-408, and 28-77-413.

(e) A fiduciary may not exercise the power under subsection (a) of this section to make an adjustment or under § 28-77-408 to make a determination that an allocation is insubstantial if:

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

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

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

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

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

(6) possessing or exercising the power would cause an individual to be treated as making a gift for federal gift tax purposes;

(7) the fiduciary is not an independent person;

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

(9) the trust is a unitrust under § 28-77-301 et seq.

(f) If subdivisions (e)(4), (5), (6), or (7) of this section applies to a fiduciary:

(1) a co-fiduciary to which subdivisions (e)(4) through (7) of this section does not apply may exercise the power to adjust, unless the exercise of the power by the remaining co-fiduciary or co-fiduciaries is not permitted by the terms of the trust or law other than this chapter; or

(2) if there is no co-fiduciary to which subdivisions (e)(4) of through (7) of this section does not apply, the fiduciary may appoint a co-fiduciary to which subdivision (e)(4) through (7) of this section does not apply, which may be a special fiduciary with limited powers, and the appointed co-fiduciary may exercise the power to adjust under subsection (a) of this section, unless the appointment of a co-fiduciary or the exercise of the power by a co-fiduciary is not permitted by the terms of the trust or law other than this chapter.

(g) A fiduciary may release or delegate to a co-fiduciary the power to adjust under subsection (a) of this section if the fiduciary determines that the fiduciary's possession or exercise of the power will or may:

(1) cause a result described in subdivisions (e)(1) through (6) or subdivision (e)(8) of this section; or

(2) deprive the trust of a tax benefit or impose a tax burden not described in subdivisions (e)(1) through (6) of this section.

(h) A fiduciary's release or delegation to a co-fiduciary under subsection (g) of this section of the power to adjust under subsection (a) of this section:

(1) must be in a record;

(2) applies to the entire power, unless the release or delegation provides a limitation, which may be a limitation to the power to adjust:

(A) from income to principal;

(B) from principal to income;

(C) for specified property; or

(D) in specified circumstances;

(3) for a delegation, may be modified by a re-delegation under this subsection by the co-fiduciary to which the delegation is made; and

(4) subject to subdivision (h)(3) of this section, is permanent,

unless the release or delegation provides a specified period, including a period measured by the life of an individual or the lives of more than one individual.

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

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

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

(1) included in a report, if any, sent to beneficiaries under § 28-73-813(c); or

(2) communicated at least annually to the qualified beneficiaries determined under § 28-73-103(14), other than all beneficiaries that receive or are entitled to receive income from the trust or would be entitled to receive a distribution of principal if the trust were terminated at the time the notice is sent, assuming no power of appointment is exercised.

Subchapter 3 – Unitrust

28-77-301. Definitions.

In this subchapter:

(1) “Applicable value” means the amount of the net fair market value of a trust taken into account under § 28-77-307.

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

(3) “Income trust” means a trust that is not a unitrust.

(4) “Net fair market value of a trust” means the fair market value of the assets of the trust, less the noncontingent liabilities of the trust.

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

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

(7) "Unitrust policy" means a policy described in § 28-77-305 through § 28-77-309 and adopted under § 28-77-303.

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

28-77-302. Application – Duties and remedies.

(a) Except as otherwise provided in subsection (b) of this section, this subchapter applies to:

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

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

(A) prohibit use of this subchapter by a specific reference to this subchapter;

(B) prohibit conversion to an income trust; or

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

(b) This subchapter does not apply to a trust described in Section 170(f)(2)(B), 642(c)(5), 664(d), 2702(a)(3)(A)(ii) or (iii), or 2702(b) of the Internal Revenue Code of 1986, as amended, 26 U.S.C. Section 170(f)(2)(B), 642(c)(5), 664(d), 2702(a)(3)(A)(ii) or (iii), or 2702(b), as amended.

(c) An income trust to which this subchapter applies under subdivision (a)(1) of this section may be converted to a unitrust under this subchapter regardless of the terms of the trust concerning distributions. Conversion to a unitrust under this subchapter does not affect other terms of the trust concerning distributions of income or principal.

(d) This subchapter applies to an estate only to the extent a trust is a beneficiary of the estate. To the extent of the trust's interest in the

estate, the estate may be administered as a unitrust, the administration of the estate as a unitrust may be discontinued, or the percentage or method used to calculate the unitrust amount may be changed, in the same manner as for a trust under this subchapter.

(e) This subchapter does not create a duty to take or consider action under this subchapter or to inform a beneficiary about the applicability of this subchapter.

(f) A fiduciary that in good faith takes or fails to take an action under this subchapter is not liable to a person affected by the action or inaction.

28-77-303. Authority of fiduciary.

(a) A fiduciary, without court approval, by complying with subsections (b) and (f) of this section, may:

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

(A) that in administering the trust the net income of the trust will be a unitrust amount rather than net income determined without regard to this subchapter; and

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

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

(3) convert a unitrust to an income trust if the fiduciary adopts in a record a determination that, in administering the trust, the net income of the trust will be net income determined without regard to this subchapter rather than a unitrust amount.

(b) A fiduciary may take an action under subsection (a) of this section if:

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

(2) the fiduciary sends a notice in a record, in the manner required by § 28-77-304, describing and proposing to take the action;

(3) the fiduciary sends a copy of the notice under subdivision

(b)(2) of this section to each settlor of the trust which is:

(A) if an individual, living; or

(B) if not an individual, in existence;

(4) at least one member of each class of the qualified beneficiaries determined under § 28-73-103(14), other than the Attorney General, receiving the notice under subdivision (b)(2) of this section is:

(A) if an individual, legally competent;

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

(C) represented in the manner provided in § 28-77-304(b);

and

(5) the fiduciary does not receive, by the date specified in the notice under § 28-77-304(d)(5), an objection in a record to the action proposed under subdivision (b)(2) of this section from a person to which the notice under subdivision (b)(2) of this section is sent.

(c) If a fiduciary receives, not later than the date stated in the notice under § 28-77-304(d)(5), an objection in a record described in Section § 28-77-304(d)(4) to a proposed action, the fiduciary or a beneficiary may request the court to have the proposed action taken as proposed, taken with modifications, or prevented. A person described in § 28-77-304(a) may oppose the proposed action in the proceeding under this subsection, whether or not the person:

(1) consented under § 28-77-304(c); or

(2) objected under § 28-77-304(d)(4).

(d) If, after sending a notice under subdivision (b)(2) of this section, a fiduciary decides not to take the action proposed in the notice, the fiduciary shall notify in a record each person described in § 28-77-304(a) of the decision not to take the action and the reasons for the decision.

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

(f) In deciding whether and how to take an action authorized by subsection (a) of this section, or whether and how to respond to a request by a beneficiary under subsection (e) of this section, a fiduciary shall

consider all factors relevant to the trust and the beneficiaries, including relevant factors in § 28-77-201(e).

(g) A fiduciary may release or delegate the power to convert an income trust to a unitrust under subdivision (a)(1) of this section, change the percentage or method used to calculate a unitrust amount under subdivision (a)(2) of this section, or convert a unitrust to an income trust under subdivision (a)(3) of this section, for a reason described in § 28-77-203(g) and in the manner described in § 28-77-203(h).

28-77-304. Notice.

(a) A notice required by § 28-77-303(b)(2) must be sent in a manner authorized under § 28-73-109 to:

(1) the qualified beneficiaries determined under § 28-73-103(14), other than the Attorney General; and

(2) each person acting as trust director of the trust under the Uniform Directed Trust Act, § 28-76-101 et seq.

(b) The representation provisions of §§ 28-73-301 – 28-73-305 apply to notice under this section.

(c) A person may consent in a record at any time to action proposed under § 28-77-303(b)(2). A notice required by § 28-77-303(b)(2) need not be sent to a person that consents under this subsection.

(d) A notice required by § 28-77-303(b)(2) must include:

(1) the action proposed under § 28-77-303(b)(2);

(2) for a conversion of an income trust to a unitrust, a copy of the unitrust policy adopted under § 28-77-303(a)(1);

(3) for a change in the percentage or method used to calculate the unitrust amount, a copy of the unitrust policy or amendment or replacement of the unitrust policy adopted under § 28-77-303(a)(2);

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

(5) the date by which an objection under subdivision (d)(4) of this section must be received by the fiduciary, which must be at least 30 days after the date the notice is sent;

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

(7) the name and contact information of the fiduciary; and
(8) the name and contact information of a person that may be contacted for additional information.

28-77-305. Unitrust policy.

(a) In administering a unitrust under this subchapter, a fiduciary shall follow a unitrust policy adopted under § 28-77-303(a)(1) or (2) or amended or replaced under § 28-77-303(a)(2).

(b) A unitrust policy must provide:

(1) the unitrust rate or the method for determining the unitrust rate under § 28-77-306;

(2) the method for determining the applicable value under § 28-77-307; and

(3) the rules described in § 28-77-306 through § 28-77-309 which apply in the administration of the unitrust, whether the rules are:

(A) mandatory, as provided in § 28-77-307(a) and § 28-77-308(a); or

(B) optional, as provided in § 28-77-306, § 28-77-307(b), § 28-77-308(b), and § 28-77-309(a), to the extent the fiduciary elects to adopt those rules.

28-77-306. Unitrust rate.

(a) Except as otherwise provided in § 28-77-309(b)(1), a unitrust rate may be:

(1) a fixed unitrust rate; or

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

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

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

(b) Except as otherwise provided in § 28-77-309(b)(1), a unitrust policy may provide:

(1) a limit on how high the unitrust rate determined under subdivision (a)(2) of this section may rise;

(2) a limit on how low the unitrust rate determined under subdivision (a)(2) of this section may fall;

(3) a limit on how much the unitrust rate determined under

subdivision (a)(2) of this section may increase over the unitrust rate for the preceding period or a mathematical blend of unitrust rates over a stated number of preceding periods;

(4) a limit on how much the unitrust rate determined under subdivision (a)(2) of this section may decrease below the unitrust rate for the preceding period or a mathematical blend of unitrust rates over a stated number of preceding periods; or

(5) a mathematical blend of any of the unitrust rates determined under subdivision (a)(2) of this section and subdivisions (b)(1) through (4) of this section.

28-77-307. Applicable value.

(a) A unitrust policy must provide the method for determining the fair market value of an asset for the purpose of determining the unitrust amount, including:

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

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

(b) Except as otherwise provided in § 28-77-309(b)(2), a unitrust policy may provide methods for determining the amount of the net fair market value of the trust to take into account in determining the applicable value, including:

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

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

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

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

(5) use of:

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

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

(6) a limit on how much the applicable value of all assets,

groups of assets, or individual assets may increase over:

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

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

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

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

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

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

(9) determining the liabilities of the trust, including treatment of liabilities to conform with the treatment of assets under subdivisions (b)(1) through (8) of this section.

28-77-308. Period.

(a) A unitrust policy must provide the period used under § 28-77-306 and § 28-77-307. Except as otherwise provided in § 28-77-309(b)(3), the period may be:

(1) a calendar year;

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

(3) a calendar quarter;

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

(5) another period.

(b) Except as otherwise provided in § 28-77-309(b), a unitrust policy may provide standards for:

(1) using fewer preceding periods under § 28-77-306(a)(2)(B) or § 28-77-306(b)(3) or § 28-77-306(b)(4) if:

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

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

(2) using fewer preceding periods under § 28-77-307(b)(5)(A) or § 28-77-307(b)(5)(B), § 28-77-307(b)(6)(B), or § 28-77-307(b)(7)(B) if:

- (A) the trust was not in existence in a preceding period;
or
(B) fair market values are not available for a preceding period; and
(3) prorating the unitrust amount on a daily basis for a part of a period in which the trust or the administration of the trust as a unitrust or the interest of any beneficiary commences or terminates.

28-77-309. Special tax benefits – Other rules.

- (a) A unitrust policy may:
- (1) provide methods and standards for:
 - (A) determining the timing of distributions;
 - (B) making distributions in cash or in kind or partly in cash and partly in kind; or
 - (C) correcting an underpayment or overpayment to a beneficiary based on the unitrust amount if there is an error in calculating the unitrust amount;
 - (2) specify sources and the order of sources, including categories of income for federal income tax purposes, from which distributions of a unitrust amount are paid; or
 - (3) provide other standards and rules the fiduciary determines serve the interests of the beneficiaries.
- (b) If a trust qualifies for a special tax benefit or a fiduciary is not an independent person:
- (1) the unitrust rate established under § 28-77-306 may not be less than three percent or more than five percent;
 - (2) the only provisions of § 28-77-307 which apply are § 28-77-307(a) and § 28-77-307(b)(1), § 28-77-307(b)(4), § 28-77-307(b)(5)(A), and § 28-77-307(b)(9);
 - (3) the only period that may be used under Section 308 is a calendar year under § 28-77-308(a)(1); and
 - (4) the only other provisions of § 28-77-308 which apply are § 28-77-308(b)(2)(A) and § 28-77-308(b)(3).

Subchapter 4 – Allocation of Receipts

Part 1 – Receipts From Entity

28-77-401. Character of receipts from entity.(a) In this section:

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

(A) return of capital; or

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

(2) "Entity":

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

(B) does not include:

(i) a trust or estate to which § 28-77-402 applies;

(ii) a business or other activity to which § 28-77-403 applies which is not conducted by an entity described in subdivision (a)(2)(A) of this section;

(iii) an asset-backed security; or

(iv) an instrument or arrangement to which § 28-77-416 applies.

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

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

(c) Except as otherwise provided in subdivisions (d)(2) through (4) of this section, a fiduciary shall allocate to income:

(1) money received in an entity distribution; and

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

(d) A fiduciary shall allocate to principal:

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

(A) money; or

(B) tangible personal property of nominal value;

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

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

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

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

(B) treated for federal income tax purposes comparably to the treatment described in subdivision (d)(4)(A) of this section.

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

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

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

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

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

(3) if neither subdivision (e)(1) nor subdivision (e)(2) of this section applies, by considering the factors in subsection (f) of this section and the information known to the fiduciary or provided to the fiduciary by or on behalf of the entity.

(f) In making a determination or estimate under subdivision (e)(3) of this section, a fiduciary may consider:

(1) a characterization of an entity distribution provided by or on behalf of the entity;

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

(A) the entity distribution; or

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

(3) the amount described in subdivision (f)(2) of this section compared to the amount the fiduciary determines or estimates is, during the current or preceding accounting periods:

(A) the entity's operating income;

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

(i) all or part of the business or other activity conducted by the entity;

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

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

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

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

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

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

(G) the amount of money the entity has received from the sources described in § 28-77-407, § 28-77-410, § 28-77-411, and § 29-77-412; and

(H) the amount of money the entity has received from a source not otherwise described in this subdivision (f)(3)(H); and

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

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

the amount of the entity distribution which is in doubt.

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

(i) If a fiduciary receives additional information about the application of this section to an entity distribution after the fiduciary has paid part of the entity distribution to a beneficiary, the fiduciary is not required to change or recover the payment to the beneficiary but may consider that information in determining whether to exercise the power to adjust under § 28-77-203.

28-77-402. Distribution from trust or estate.

A fiduciary shall allocate to income an amount received as a distribution of income, including a unitrust distribution under § 28-77-301 et seq., from a trust or estate in which the fiduciary has an interest, other than an interest the fiduciary purchased in a trust that is an investment entity, and shall allocate to principal an amount received as a distribution of principal from the trust or estate. If a fiduciary purchases, or receives from a settlor, an interest in a trust that is an investment entity, § 28-77-401, § 28-77-415, or § 28-77-416 applies to a receipt from the trust.

28-77-403. Business or other activity conducted by fiduciary.

(a) This section applies to a business or other activity conducted by a fiduciary if the fiduciary determines that it is in the interests of the beneficiaries to account separately for the business or other activity instead of:

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

(2) conducting the business or other activity through an entity described in § 28-77-401(a)(2)(A).

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

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

(1) may determine:

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

(i) working capital;

(ii) the acquisition or replacement of fixed assets;

and

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

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

(2) may make a determination under subdivision (c)(1) of this section separately and differently from the fiduciary's decisions concerning distributions of income or principal; and

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

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

(1) retail, manufacturing, service, and other traditional business activities;

(2) farming;

(3) raising and selling livestock and other animals;

(4) managing rental properties;

(5) extracting minerals, water, and other natural resources;

(6) growing and cutting timber;

(7) an activity to which § 28-77-414, § 28-77-415, or § 28-77-416 applies; and

(8) any other business conducted by the fiduciary.

Part 2 – Receipts Not Normally Apportioned

28-77-404. Principal receipts.A fiduciary shall allocate to principal:

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

(A) an individual during the individual's lifetime;

(B) an estate;

(C) a trust on termination of an income interest; or

(D) a payor under a contract naming the fiduciary as

beneficiary;

(2) except as otherwise provided in this subchapter, money or other property received from the sale, exchange, liquidation, or change in form of a principal asset;

(3) an amount recovered from a third party to reimburse the fiduciary because of a disbursement described in § 28-77-502(a) or for another reason to the extent not based on loss of income;

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

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

(6) other receipts as provided in Part 3.

28-77-405. Rental property.

To the extent a fiduciary does not account for the management of rental property as a business under § 28-77-403, the fiduciary shall allocate to income an amount received as rent of real or personal property, including an amount received for cancellation or renewal of a lease. An amount received as a refundable deposit, including a security deposit or a deposit that is to be applied as rent for future periods:

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

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

28-77-406. Receipt on obligation to be paid in money.

(a) This section does not apply to an obligation to which § 28-77-409, § 28-77-410, § 28-77-411, § 28-77-412, § 28-77-414, § 28-77-415, or § 28-77-416 applies.

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

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

28-77-407. Insurance policy or contract.

(a) This section does not apply to a contract to which § 28-77-409 applies.

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

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

- (1) occupancy or other use by a current income beneficiary;
- (2) income; or
- (3) subject to § 28-77-403, profits from a business.

Part 3 – Receipts Normally Apportioned

28-77-408. Insubstantial allocation not required.

(a) If a fiduciary determines that an allocation between income and

principal required by § 28-77-409, § 28-77-410, § 28-77-411, § 28-77-412, or § 28-77-415 is insubstantial, the fiduciary may allocate the entire amount to principal, unless § 28-77-203(e) applies to the allocation.

(b) A fiduciary may presume an allocation is insubstantial under subsection (a) of this section if:

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

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

(c) The power to make a determination under subsection (a) of this section may be:

(1) exercised by a co-fiduciary in the manner described in § 28-77-203(f); or

(2) released or delegated for a reason described in § 28-77-203(g) and in the manner described in § 28-77-203(h).

28-77-409. Deferred compensation, annuity, or similar payment.

(a) In this section:

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

(2) "Marital trust" means a trust:

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

(B) that qualifies for a marital deduction with respect to the settlor's estate under Section 2056 of the Internal Revenue Code of 1986, as amended, 26 U.S.C. Section 2056, as amended, because:

(i) an election to qualify for a marital deduction under Section 2056(b)(7) of the Internal Revenue Code of 1986, as amended, 26 U.S.C. Section 2056(b)(7), as amended, has been made; or

(ii) the trust qualifies for a marital deduction under Section 2056(b)(5) of the Internal Revenue Code of 1986, as amended, 26 U.S.C. Section 2056(b)(5), as amended.

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

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

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

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

(2) If the fiduciary cannot determine the internal income of the separate fund under subdivision (b)(1) of this section, the internal income of the separate fund is deemed to equal three percent of the value of the separate fund, according to the most recent statement of value preceding the beginning of the accounting period.

(3) If the fiduciary cannot determine the value of the separate fund under subdivision (b)(2) of this section, the value of the separate fund is deemed to equal the present value of the expected future payments, as determined under Section 7520 of the Internal Revenue Code of 1986, as amended, 26 U.S.C. Section 7520, as amended, for the month preceding the beginning of the accounting period for which the computation is made.

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

(d) The fiduciary of a marital trust shall:

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

(2) transfer from principal to income the amount the current income beneficiary requests the fiduciary to transfer, not greater than the amount by which the internal income of the separate fund during the period

exceeds the amount the fiduciary receives from the separate fund during the period after the application of subdivision (d)(1) of this section; and

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

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

(B) the amount transferred from principal to income under subdivision (d)(2) of this section.

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

28-77-410. Liquidating asset.

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

(b) This section does not apply to a receipt subject to § 28-77-401, § 28-77-409, § 28-77-411, § 28-77-412, § 28-77-414, § 28-77-415, § 28-77-416, or § 28-77-503.

(c) A fiduciary shall allocate:

(1) to income:

(A) a receipt produced by a liquidating asset, to the extent the receipt does not exceed five percent of the value of the asset; or

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

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

28-77-411. Minerals, water, and other natural resources.

(a) To the extent that a fiduciary accounts for receipts from an interest in minerals or other natural resources pursuant to this section, the fiduciary shall allocate them as follows:

(1) If received as nominal delay rental or nominal annual rent on a lease, a receipt must be allocated to income.

(2) If received from a production payment, a receipt must be allocated to income if and to the extent that the agreement creating the production payment provides a factor for interest or its equivalent. The balance must be allocated to principal.

(3) If an amount received as a royalty, shut-in-well payment, take-or-pay payment, bonus, or delay rental is more than nominal, 90 percent must be allocated to principal and the balance to income.

(4) If an amount is received from a working interest or any other interest not provided for in paragraph (1), (2), or (3), 90 percent of the net amount received must be allocated to principal and the balance to income.

(b) An amount received on account of an interest in water that is renewable must be allocated to income. If the water is not renewable, 90 percent of the amount must be allocated to principal and the balance to income.

(c) This chapter applies whether or not a decedent or donor was extracting minerals, water, or other natural resources before the interest became subject to the trust.

(d) If a trust owns an interest in minerals, water, or other natural resources on before the effective date of this chapter, the fiduciary may allocate receipts from the interest as provided in this chapter or in the manner used by the fiduciary before the effective date of this chapter. If the trust acquires an interest in minerals, water, or other natural resources after the effective date of this chapter, the fiduciary shall allocate receipts from the interest as provided in this chapter.

28-77-412. Timber.

(a) To the extent a fiduciary does not account for receipts from the sale of timber and related products as a business under § 28-77-403, the fiduciary shall allocate the net receipts:

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

(2) to principal, to the extent the amount of timber cut from the land exceeds the rate of growth of the timber or the net receipts are

from the sale of standing timber;

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

(4) to principal, to the extent advance payments, bonuses, and other payments are not allocated under subdivisions (a)(1), (2), or (3) of this section.

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

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

(d) If a fiduciary owns or holds an interest in land used for growing and cutting timber before the effective date of this chapter, the fiduciary may allocate net receipts from the sale of timber and related products as provided in this section or in the manner used by the fiduciary before the effective date of this chapter. If the fiduciary acquires an interest in land used for growing and cutting timber on or after the effective date of this chapter, the fiduciary shall allocate net receipts from the sale of timber and related products as provided in this section.

28-77-413. Marital deduction property not productive of income.

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

(1) make property productive of income;

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

(3) exercise the power to adjust under § 28-77-203.

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

28-77-414. Derivative or option.

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

(b) To the extent a fiduciary does not account for a transaction in derivatives as a business under § 28-77-403, the fiduciary shall allocate 10 percent of receipts from the transaction and 10 percent of disbursements made in connection with the transaction to income and the balance to principal.

(c) Subsection (d) of this section applies if:

(1) a fiduciary:

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

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

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

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

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

(1) an amount received for granting the option;

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

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

28-77-415. Asset-backed security.

(a) Except as otherwise provided in subsection (b) of this section, a fiduciary shall allocate to income a receipt from or related to an asset-backed security, to the extent the payor identifies the payment as being from interest or other current return, and to principal the balance of the

receipt.

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

28-77-416. Other financial instrument or arrangement.

A fiduciary shall allocate receipts from or related to a financial instrument or arrangement not otherwise addressed by this chapter. The allocation must be consistent with § 28-77-414 and § 28-77-415.

Subchapter 5 – Allocation of Disbursements

28-77-501. Disbursement from income.

Subject to § 28-77-504, and except as otherwise provided in § 28-77-601(c)(2) or (3), a fiduciary shall disburse from income:

(1) one-half of:

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

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

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

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

(4) a premium on insurance covering loss of a principal asset or

income from or use of the asset.

28-77-502. Disbursement from principal.

(a) Subject to § 28-77-505, and except as otherwise provided in § 28-77-601(c)(2), a fiduciary shall disburse from principal:

(1) the balance of the disbursements described in § 28-77-501(1) and (3), after application of § 28-77-501(2);

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

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

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

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

(6) a payment of a premium for insurance, including title insurance, not described in § 28-77-501(4), of which the fiduciary is the owner and beneficiary;

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

(8) a payment:

(A) related to environmental matters, including:

(i) reclamation;

(ii) assessing environmental conditions;

(iii) remedying and removing environmental contamination;

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

(v) preventing future releases of substances;

(vi) collecting amounts from persons liable or potentially liable for the costs of activities described in subdivisions(a)(8)(A)(i) through (v) of this section;

(vii) penalties imposed under environmental laws or regulations;

(viii) other actions to comply with environmental laws or regulations;
(ix) statutory or common law claims by third parties; and
(x) defending claims based on environmental matters;
and

(B) for a premium for insurance for matters described in subdivision (a)(8)(A) of this section.

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

28-77-503. Transfer from income to principal for depreciation.

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

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

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

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

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

(A) under § 28-77-410 for the asset; or

(B) under § 28-77-403 for the business or other activity in which the asset is used.

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

28-77-504. Reimbursement of income from principal.

(a) If a fiduciary makes or expects to make an income disbursement described in subsection (b) of this section, the fiduciary may transfer an appropriate amount from principal to income in one or more accounting periods

to reimburse income.

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

(1) an amount chargeable to principal but paid from income because principal is illiquid;

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

(3) a disbursement described in § 28-77-502(a).

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

28-77-505. Reimbursement of principal from income.

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

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

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

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

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

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

(5) a disbursement described in § 28-77-502(a).

(c) If an asset whose ownership gives rise to a principal disbursement becomes subject to a successive interest after an income interest ends, the

fiduciary may continue to make transfers under subsection (a) of this section.

28-77-506. Income taxes.

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

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

(c) Subject to subsection (d) of this section and § 28-77-504, § 28-77-505, and § 28-77-507, a tax required to be paid by a fiduciary on a share of an entity's taxable income in an accounting period must be paid from:

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

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

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

28-77-507. Adjustment between income and principal because of taxes.

(a) A fiduciary may make an adjustment between income and principal to offset the shifting of economic interests or tax benefits between current income beneficiaries and successor beneficiaries which arises from:

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

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

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

(b) If the amount of an estate tax marital or charitable deduction is reduced because a fiduciary deducts an amount paid from principal for income

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

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

Subchapter 6 – Death of Individual or Termination of Income Interest

28-77-601. Determination and distribution of net income.

(a) This section applies when:

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

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

(b) A fiduciary of an estate or trust with an income interest that terminates shall determine, under subsection (e) of this section and § 28-77-401 et seq., § 28-77-501 et seq., and § 28-77-701 et seq., the amount of net income and net principal receipts received from property specifically given to a beneficiary. The fiduciary shall distribute the net income and net principal receipts to the beneficiary that is to receive the specific property.

(c) A fiduciary shall determine the income and net income of an estate or income interest in a trust which terminates, other than the amount of net income determined under subsection (b) of this section, under subchapters § 28-77-401 et seq., § 28-77-501 et seq., and § 28-77-701 et seq. and by:

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

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

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

(B) the fiduciary makes an adjustment under § 28-77-507(b); and

(3) paying from principal other disbursements made or incurred in connection with the settlement of the estate or the winding up of an income interest that terminates, including:

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

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

(d) A fiduciary shall distribute net income in the manner described in § 28-77-602 to all other beneficiaries, including a beneficiary that receives a pecuniary amount in trust, even if the beneficiary holds an unqualified power to withdraw assets from the trust or other presently exercisable general power of appointment over the trust.

(e) A fiduciary may not reduce principal or income receipts from property described in subsection (b) of this section because of a payment described in § 28-77-501 or § 28-77-502, to the extent the decedent's will, the terms of the trust, or applicable law requires the fiduciary to make the payment from assets other than the property or to the extent the fiduciary recovers or expects to recover the payment from a third party. The net income and principal receipts from the property must be determined by including the amount the fiduciary receives or pays regarding the property, whether the amount accrued or became due before, on, or after the date of the decedent's death or an income interest's terminating event, and making a reasonable

provision for an amount the estate or income interest may become obligated to pay after the property is distributed.

28-77-602. Distribution to successor beneficiary.

(a) Except to the extent § 28-77-301 et seq. applies for a beneficiary that is a trust, each beneficiary described in § 28-77-601(d) is entitled to receive a share of the net income equal to the beneficiary's fractional interest in undistributed principal assets, using values as of the distribution date. If a fiduciary makes more than one distribution of assets to beneficiaries to which this section applies, each beneficiary, including a beneficiary that does not receive part of the distribution, is entitled, as of each distribution date, to a share of the net income the fiduciary received after the decedent's death, an income interest's other terminating event, or the preceding distribution by the fiduciary.

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

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

(2) The beneficiary's fractional interest under subdivision (b)(1) of this section must be calculated:

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

(B) without regard to:

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

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

(3) The distribution date under subdivision (b)(1) of this section may be the date as of which the fiduciary calculates the value of the assets if that date is reasonably near the date on which the assets are distributed.

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

of each beneficiary in the net income.

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

Subchapter 7 – Apportionment at Beginning and End of Income Interest

28-77-701. When right to income begins and ends.

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

- (1) the trust for the current income beneficiary; or
- (2) a successive interest for a successor beneficiary.

(b) An asset becomes subject to a trust under subdivision (a)(1) of this section:

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

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

(3) for an asset that is transferred to a fiduciary by a third party because of a decedent's death, on the date of the decedent's death.

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

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

28-77-702. Apportionment of receipts and disbursements when decedent dies or income interest begins.

(a) A fiduciary shall allocate an income receipt or disbursement, other than a receipt to which § 28-77-601(b) applies, to principal if its due date occurs before the date on which:

(1) for an estate, the decedent died; or

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

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

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

(d) A receipt or disbursement is periodic under subsections (b) and (c) of this section if:

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

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

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

(f) Distributions to shareholders or other owners from an entity to which § 28-77-401 applies are due:

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

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

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

28-77-703. Apportionment when income interest ends.

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

that has been added or is required to be added to principal under the terms of the trust.

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

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

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

(2) subsection (b) of this section applies only to the balance of the undistributed income.

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

Subchapter 8 – Miscellaneous Provisions

28-77-801. Uniformity of application and construction.

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

28-77-802. Relation to Electronic Signatures in Global and National Commerce Act.

This chapter modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

28-77-803. Application to trust or estate.

This chapter applies to a trust or estate existing or created on or

after the effective date of this chapter, except as otherwise expressly provided in the terms of the trust or this chapter.

SECTION 3. DO NOT CODIFY. Effective date.

This act takes effect on January 1, 2022.

/s/Maddox

APPROVED: 4/30/21