N2 SB 753/13 – JPR

By: Senator Stone

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CHAPTER _____

1 AN ACT concerning

 $\mathbf{2}$

Maryland Trust Act

3 FOR the purpose of repealing and revising certain provisions of law relating to trusts; 4 providing that this Act may be cited as the Maryland Trust Act; providing for $\mathbf{5}$ the scope of this Act; providing for the construction of this Act; providing for the 6 designation of the principal place of administration for a trust; establishing a 7 standard for whether notice to a person under this Act must be accomplished 8 and how notice may be waived; providing for the role of a court in the 9 administration of a trust; providing that a trustee and the beneficiaries of a 10 trust are subject to the jurisdiction of the courts of this State under certain 11 circumstances; establishing standards for judicial review of the discretion of a 12 trustee; providing for the consent of a person that may represent and bind 13another person under this Act; providing that the holder of a certain gualified 14 power of appointment may represent and bind a certain person; providing that a 15certain person may represent a certain other person with respect to a particular 16 question or dispute; authorizing a court to appoint a representative for a certain 17interest in certain circumstances; providing methods and requirements for 18 creating a trust under this Act; establishing the method by which a trust for 19 care of an animal may be created; providing certain rules for a certain 20noncharitable trust; providing for the modification or termination of a trust; 21authorizing a court to reform the terms of a certain trust; authorizing a court to 22modify the terms of a trust in a certain manner; authorizing a court to authorize 23a creditor or assignee of a beneficiary to reach a certain beneficiary's interest by 24attachment of certain distributions; establishing the rights of a certain 25beneficiary and a certain creditor to a trust interest that is subject to a

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

Strike out indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 discretionary distribution provision; providing that certain actions may not be $\mathbf{2}$ taken with respect to a beneficial interest that is subject to a support provision; 3 providing for the treatment of a spendthrift provision in a trust; authorizing a 4 court to authorize a creditor or assignee of the beneficiary to attach certain $\mathbf{5}$ distributions in certain circumstances; providing for circumstances to create a 6 certain general power of appointment or a power of withdrawal; establishing 7rules for the claim of a certain creditor; establishing that trust property is not 8 subject to certain personal obligations of a trustee; prohibiting a creditor from 9 taking certain actions to compel a certain distribution; providing for the 10 transfer to trust of property held by tenants by the entirety; establishing the 11 capacity of a settlor of a revocable trust to take certain actions; providing the 12manner by which the settlor may revoke or amend a revocable trust; 13 establishing the rights of certain beneficiaries; establishing the method by 14which a person designated as trustee accepts or rejects the trusteeship; 15requiring a trustee to give a certain bond under certain circumstances; 16 providing for circumstances in which a vacancy occurs in a cotrusteeship; 17authorizing a trustee to resign in certain circumstances; providing grounds for 18 the removal of a trustee; establishing the duties and powers of a trustee who 19has resigned or been removed; providing that certain trustees are entitled to 20certain commissions and certain reimbursements; authorizing certain persons 21to exercise certain trust and fiduciary powers; prohibiting a certain person from 22serving as a trustee in certain circumstances; requiring a certain trustee to 23perform certain duties; authorizing a trustee to delegate certain duties and 24powers in certain circumstances; authorizing a certain trustee to follow a 25certain direction of the settlor; establishing that certain persons shall be 26considered advisers and fiduciaries in certain circumstances; requiring a certain 27trustee to act in accordance with the directions of a certain adviser in certain 28circumstances; providing that a certain trustee does not have certain liabilities 29and duties; providing that a certain adviser has the power to perform certain 30 actions; requiring a trustee to take certain steps to take control of and protect 31 the trust property, with a certain exception; requiring a trustee to do certain 32record keeping and to keep certain property in a certain manner; requiring a trustee to take certain steps in certain circumstances; requiring a trustee to 33 34respond promptly to a certain request for information; requiring a trustee to 35 provide certain notice to certain beneficiaries; requiring a trustee to send a 36 certain report to certain persons; prohibiting a trustee from exercising certain 37 powers; authorizing a trustee to exercise certain powers in certain 38 circumstances; providing for damages for which a certain trustee is or is not 39 liable; authorizing a court to award costs and expenses in a certain judicial 40 proceeding; providing that a certain trustee is not liable for a certain loss; 41 providing that a certain term of a trust is unenforceable in certain 42circumstances; providing for the effect of an exculpatory term in a trust; 43 providing for the liability of a trustee for breach of trust in certain 44circumstances; establishing limitations of personal liability of a trustee in 45certain circumstances; authorizing a trustee to furnish a certification of trust in 46 certain circumstances; providing that the provisions of this Act relating to the 47use of electronic records and signatures conform to a certain federal statute;

1 providing for the severability of provisions in this Act if held invalid; providing $\mathbf{2}$ for the application of this Act to certain trusts and judicial proceedings; defining 3 certain terms; providing for a delayed effective date; and generally relating to 4 trusts. $\mathbf{5}$ BY repealing and reenacting, with amendments, 6 Article – Estates and Trusts 7 Section 11–102(b)(12) 8 Annotated Code of Maryland 9 (2011 Replacement Volume and 2013 Supplement) 10 BY repealing 11 Article – Estates and Trusts 12Section 14–101 through 14–116 and the subtitle "Subtitle 1. General Provisions" 13Annotated Code of Maryland 14(2011 Replacement Volume and 2013 Supplement) 15BY adding to 16 Article – Estates and Trusts 17 Section 14.5–101 through 14.5–1006 to be under the new title "Title 14.5. Maryland Trust Act" 18 19 Annotated Code of Maryland 20(2011 Replacement Volume and 2013 Supplement) 21BY repealing and reenacting, with amendments, 22Article – Financial Institutions 23Section 3-506(b)Annotated Code of Maryland 24(2011 Replacement Volume and 2013 Supplement) 2526Preamble 27WHEREAS, Trusts serve many useful purposes and have a long history in the Anglo-American legal system; and 2829WHEREAS, Codification of Maryland's trust laws will benefit both the public 30 and practitioners; and 31 WHEREAS, The fact that a beneficiary cannot compel distribution from a 32 discretionary trust has justified not counting the trust assets in determining the 33 beneficiary's eligibility for need-based programs such as Medicaid, and not subjecting them to the estate tax when the beneficiary dies; and 3435 WHEREAS, These advantages, and the fact that Maryland trusts may have 36 perpetual existence and no limits on size, make it reasonable to expect the popularity of discretionary trusts to increase substantially, as well as their impact on public 3738 revenues and expenses; and

$egin{array}{c} 1 \\ 2 \\ 3 \end{array}$	WHEREAS, By contrast, a beneficiary who is not also a trustee of a discretionary trust has few rights and little recourse to address abuses of power by a trustee; and
4 5	<u>WHEREAS, A trust with no enforceable rights for a beneficiary is a trust in</u> <u>name only; and</u>
$6 \\ 7$	<u>WHEREAS, The Judiciary must be able to intervene aggressively to protect all</u> <u>trust beneficiaries; now, therefore,</u>
8 9	SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:
10	Article – Estates and Trusts
11	11–102.
12 13 14	(b) Subject to §§ 4–409 of this article and 11–103 of this subtitle, the common–law rule against perpetuities as now recognized in the State is preserved, but the rule does not apply to the following:
$\begin{array}{c} 15\\ 16 \end{array}$	(12) A trust created under § [14–112] 14.5–407 of this article to provide for the care of an animal alive during the lifetime of the settlor; or
17	[Subtitle 1. General Provisions.]
18	[14–101.
19 20 21	A court having equity jurisdiction has general superintending power with respect to trusts. The provisions of Titles 1 through 13 of this article do not affect or supersede this power.]
22	[14-102.
23 24 25 26 27 28 29	In the absence of express language to the contrary, the rules contained in $\$\$ 1-202, 1-203, 1-204, 1-205, 1-206, 1-207, 1-208, 1-209, and 1-210.1 of this article shall be applied in construing the terms of an inter vivos trust. Whenever any of those statutory sections refer to a "will," "estate," or similar terms relevant primarily to wills and estates or the takers under them, the terms shall be modified to mean "trust instrument," "trust," or similar terms to reflect the application of the principles of those sections to inter vivos trusts.]$

[14–103.

1 (a) A testamentary trustee and trustee of any other trust whose duties (1) $\mathbf{2}$ comprise the collection and distribution of income from property held under a trust 3 agreement or the preservation and distribution of the property are entitled to 4 commissions provided for in this section for their services in administering the trusts. $\mathbf{5}$ The amount and source of payment of commissions are subject to the provisions of any 6 valid agreement. Any court having jurisdiction over the administration of the trust 7may increase or diminish commissions for sufficient cause or may allow special 8 commissions or compensation for services of an unusual nature.

9 (2) A schedule of increased rates of income commissions and corpus 10 commissions may be charged by a trustee whose activities are subject to State or 11 federal supervision or who is a member of the Maryland Bar and who has:

12 (i) Filed a schedule of the increased rates of commissions with 13 an appropriate agency; and

14 (ii) Given notice of the scheduled rates or revisions to the 15 ascertained beneficiaries of the affected trust.

16 (3) The notice required under paragraph (2) of this subsection shall be 17 delivered to the beneficiaries personally or sent to the beneficiaries at their last known 18 address by registered or certified mail, postage prepaid, return receipt requested.

19 (b) Accounting from July 1, 1981, whether or not the trust was in existence 20 at that time, income commissions are:

21 (1) 6 percent upon all income from real estate, ground rents, and 22 mortgages collected in each year; and

(2) 6 1/2 percent upon the first \$10,000 of all other income collected in
each year, 5 percent upon the next \$10,000, 4 percent upon the next \$10,000, and 3
percent upon any remainder.

Income commissions shall be paid from and chargeable against income. Income collected includes any portion of income payable to a trustee but withheld by the payor in compliance with any revenue law.

29 (c) Accounting from July 1, 1981, whether or not the trust was in existence 30 at that time, commissions are payable at the end of each year upon the fair value of 31 the corpus or principal held in trust at the end of each year as follows:

- 32 (1) Four tenths of one percent on the first \$250,000;
- 33 (2) One fourth of one percent on the next \$250,000;
- 34 (3) Three twentieths of one percent on the next \$500,000; and

1 (4) One tenth of one percent upon any excess. Corpus commissions 2 shall be paid out of and chargeable against the corpus.

If a trust terminates, with respect to all or any part of the corpus held in trust in the course of any year, the commission for that year shall be reduced or prorated according to the part of the year elapsed and the amount of corpus as to which the trust terminates, and be chargeable, for such part of a year (and with respect to any such part of the corpus) at such termination of the trust, upon the then value of the corpus.

9 (d) For selling real or leasehold property, a commission upon the proceeds of 10 the sale is payable at the rate allowed by rule of court or statute to trustees appointed 11 to make sales under decrees or orders of the circuit court for the county where the real 12 or leasehold property is situated, or if the property is located outside Maryland, for 13 selling similar property in the county where the trust is being administered. The 14 commission is payable from the proceeds of the sale when collected.

15 (e) Upon the final distribution of any trust estate, or portion of it, an 16 allowance is payable commensurate with the labor and responsibility involved in 17 making the distribution, including the making of any division, the ascertainment of 18 the parties entitled, the ascertainment and payment of taxes, and any necessary 19 transfer of assets. The allowance is subject to revision or determination by any circuit 20 court having jurisdiction. In the absence of special circumstances the allowance shall 21 be equal to one half of one percent upon the fair value of the corpus distributed.

(f) In determining what is a single trust for the application of the rates provided in this section, all property held undivided under the terms of the will or other instrument creating the trust shall be considered as a single trust. After any shares have been set apart or divided, to be held in separate trust, each separate trust set apart shall be considered as a single trust.

(g) (1) Instead of the rates of income commissions and corpus commissions provided in subsections (b) and (c) of this section, a trustee may charge reasonable compensation calculated in accordance with a schedule of rates previously filed by the trustee with the appropriate agency as specified in paragraph (2) of this subsection, if the trustee is:

32 (i) A financial institution whose activities are subject to
33 supervision by this State or the federal government or which is an instrumentality of
34 the United States; or

35

(ii) A member of the Bar of this State.

36 (2) A trustee shall file a schedule of rates under this subsection as 37 follows:

1 (i) For a savings and loan association, with the State Director 2 of the Division of Savings and Loan Associations;

- 3 (ii) For all other trustees, including attorneys and State 4 chartered and national banks, with the Commissioner of Financial Regulation; and
- 5 (iii) For a trustee administering an estate under the jurisdiction 6 of a court, also with the trust clerk of the court.

7 (3) In a trust involving multiple trustees and more than one of the 8 trustees may be entitled to file a schedule of increased rates, the controlling schedule 9 will be the schedule filed by the trustee having custody of the assets and maintaining 10 records of the trust.

11 Whenever a trustee files a schedule of increased rates under this (4)12subsection, the trustee shall give notice to the ascertained beneficiaries of each 13affected trust. The notice required under this paragraph shall be delivered to the 14beneficiaries personally or sent to the beneficiaries at their last known address by 15registered or certified mail, postage prepaid, return receipt requested. Any beneficiary of a trust who objects to the schedule of rates to be charged to that trust, after 16 17notifying the trustee of the objection, may petition the appropriate circuit court to 18review the reasonableness of the rates to be charged. The notice required by this 19paragraph shall include a clear statement of the rights and procedures available to 20beneficiaries under this subsection. If the court finds that the rates in the schedule are 21unreasonable for the current fiscal year of the particular trust, the trustee's 22commissions for that trust for that fiscal year shall be limited to the rates charged that 23trust during the previous fiscal year.

(5) If a trustee does not file a schedule of rates with the appropriate
agency under paragraph (2)(i) or (ii) of this subsection and does not notify ascertained
beneficiaries as provided in paragraph (4) of this subsection, the trustee is limited to
charging the rates set forth in subsections (b) and (c) of this section.

(h) An individual trustee who is not authorized to file a schedule of increased
rates under this section is limited to charging the rates set forth in subsections (b) and
(c) of this section unless the trustee petitions the circuit court for the county where the
trustee is located and obtains approval of an increase in fee after giving notice of such
action to the ascertained beneficiaries of the trusts affected.

(i) The schedule of increased rates of income commissions and corpus
 commissions which trustees are authorized to charge as provided in subsection (g) of
 this section is not applicable to guardians.

(j) The legal and court costs incurred by the trustee pursuant to any court
review under subsection (g)(4) or (h) of this section shall be charged against trustees'
fees and may not be assumed by the trust or the beneficiaries.]

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1 [14–104.

 $\mathbf{2}$ A judge of any court established under the laws of the State or the United 3 States or any clerk of court or register of wills, unless he is the surviving spouse of the 4 grantor of the trust, or is related to the grantor within the third degree, may not serve $\mathbf{5}$ as a trustee of any inter vivos or testamentary trust created by an instrument and 6 executed in Maryland by the grantor or any trustee, administered in the State or 7governed by the laws of the State, unless he was actually serving as a trustee of the 8 trust on December 31, 1969.

9 [14–105.

10 In the absence of actual knowledge or of reasonable cause to inquire as to whether a trustee is improperly exercising his power, a person dealing with a trustee 11 12need not inquire whether a trustee is properly exercising his power, and is protected 13as if the trustee properly exercised the power. A person need not see to the proper 14application of trust assets paid or delivered to a trustee.]

[14–106. 15

In this section, "beneficiary" means a person in being who has a vested 16 (a) 17interest, whether:

- 18
- (1)Possessory or not; and
- 19
- Subject to divestment or not. (2)

20(b) (1)Subject to the provisions of paragraph (2) of this subsection, on 21petition by a trustee, personal representative, beneficiary, or a party in interest, after 22notice as the court may direct to the trustees, personal representatives, beneficiaries, 23and parties in interest, and for good cause shown, a court may:

- 24(i) Divide a trust into 2 or more separate trusts; or 25(ii) Consolidate 2 or more trusts into a single trust. 26A court may divide a trust or consolidate trusts: (2)27(i) On terms and conditions as the court considers appropriate; 28and 29(ii) If the court is satisfied that a division of a trust or consolidation of trusts will not defeat or materially impair: 30 1. 31 The accomplishment of trust purposes; or 2. The interests of the beneficiaries.
- 32

$\frac{1}{2}$	(3) necessary to prot	A court may pass orders that the court considers proper or ect the interests of a:
3		(i) Trustee;
4		(ii) Personal representative;
5		(iii) Beneficiary; or
6		(iv) Party in interest.
7	(c) This	s section applies to trusts:
8	(1)	Whenever created;
9	(2)	Whether inter vivos or testamentary;
10	(3)	Created by the same or different instruments;
11	(4)	Created by the same or different persons; and
12	(5)	Regardless of where created or administered.
$\begin{array}{c} 13\\14\\15\end{array}$	personal represe	s section may not be construed to limit the right of a trustee or ntative to divide a trust or consolidate trusts, without an order of a nee with the applicable provisions of the governing instrument.]
16	[14–107.	
16 17	[14–107. (a) (1)	In this section the following words have the meanings indicated.
	(a) (1) (2)	In this section the following words have the meanings indicated. (i) "Beneficiary" means an ascertainable person who has a interest in a trust estate.
17 18	(a) (1) (2)	(i) "Beneficiary" means an ascertainable person who has a
17 18 19	(a) (1) (2)	 (i) "Beneficiary" means an ascertainable person who has a interest in a trust estate. (ii) "Beneficiary" includes: 1. If the beneficiary is a minor, the beneficiary's natural
17 18 19 20 21	(a) (1) (2) present or future or legal guardian 13–101 of this	 (i) "Beneficiary" means an ascertainable person who has a interest in a trust estate. (ii) "Beneficiary" includes: 1. If the beneficiary is a minor, the beneficiary's natural

1 "Life expectancy" means the life expectancy published in the life (4) $\mathbf{2}$ tables issued by the U.S. Department of Health and Human Services from time to 3 time. "Net annual income" means the gross income of a trust estate 4 (5)during a fiscal year minus trust commissions and expenses attributable to income for $\mathbf{5}$ that fiscal year. 6 7 (b) Subject to the provisions of this section, a corporate fiduciary acting as a 8 trustee may terminate a trust without an order of court if the fair market value of the 9 trust as of the trust's last anniversary date is \$100,000 or less. 10 A corporate fiduciary trustee proposing to terminate a trust under (c)(1)11 this section shall send notice of the proposed termination to each cotrustee and each 12beneficiary of the trust at the cotrustee's or beneficiary's last known address. The notice shall be: 13 14(i) Personally delivered; or 15(ii) Mailed by certified mail, postage prepaid, return receipt 16requested.

17 (2) The notice required under paragraph (1) of this subsection shall 18 contain:

19 (i) The name of the trust;

20 (ii) The name of the person who created the trust;

21 (iii) The date on which the trust was established;

(iv) The name and address of the corporate fiduciary trustee
 seeking to terminate the trust;

24 (v) The name of any cotrustee;

(vi) A statement that the effective date of the termination shall
be at least 90 days after the date on which notice under paragraph (1) of this
subsection has been received by each cotrustee and each beneficiary;

(vii) A statement of the reasons for termination of the trust;

(viii) The approximate amount and the manner of calculation of
 each distribution of the trust estate; and

31 (ix) A statement of the right to object and the procedures to 32 follow under subsection (d) of this section.

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1 (d) (1) A person entitled to notice under subsection (c) of this section who 2 objects to the termination of a trust shall send written objection to the termination.

3 (2) The written objection shall be personally delivered or mailed by 4 certified mail, postage prepaid, return receipt requested, within 60 days after the date 5 on which notice that is sent under subsection (c)(1) of this section is received by the 6 objecting party, to the corporate fiduciary trustee proposing to terminate the trust at 7 the address in the notice.

8 (e) (1) If no beneficiary or cotrustee delivers a timely objection in 9 accordance with the provisions of subsection (d) of this section, the trust shall be 10 terminated and the trust estate shall be distributed in accordance with the provisions 11 of subsection (f) of this section.

12 (2) If a beneficiary or cotrustee delivers a timely written objection in 13 accordance with the provisions of subsection (d) of this section, the trust shall not be 14 terminated unless the objection is withdrawn in writing by the objecting party within 15 90 days after receipt of the notice by the objecting party.

16 (f) (1) A trust estate that is terminated under this section shall be 17 distributed in any manner unanimously agreed upon by all beneficiaries.

18 (2) (i) If the beneficiaries do not unanimously agree to a manner of 19 distribution, the distribution shall be made in accordance with the provisions of this 20 paragraph.

(ii) A beneficiary who has a present interest in the trust estate shall receive an amount equal to the present value of an annuity equal to the beneficiary's proportionate share of the average net annual income of the trust as of its last 3 anniversary dates for a term equal to the life expectancy of the beneficiary, at the interest rate for valuing vested benefits provided by the Pension Benefit Guaranty Corporation for the month immediately preceding the date of which the notice under subsection (c)(1) of this section is sent.

(iii) The amount of the trust estate remaining after distribution to beneficiaries having a present interest in the trust estate shall be distributed to any beneficiaries having a future interest in the trust estate in whatever proportions are provided for under the terms of the governing instrument under which the trust was created.

33 (g) The existence of spendthrift or similar protective language in the 34 governing instrument under which the trust was created may not prevent termination 35 under this section.

36 (h) All expenses incurred by the trustee incident to the termination of a trust37 under this section shall be borne by the trust estate.

1 (i) A distribution to a minor beneficiary shall be made to the minor's 2 custodian under the Maryland Uniform Gifts to Minors Act or the Maryland Uniform 3 Transfers to Minors Act.

4 (j) This section may not be construed to limit the right of any trustee to 5 terminate a trust in accordance with applicable provisions of the governing instrument 6 under which the trust was created.

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(k) A trust may be terminated under this section if:

8 (1) The trustee has determined that termination of the trust is in the 9 best interests of the beneficiaries; and

10 (2) The governing instrument does not expressly prohibit termination 11 of the trust regardless of its size.

12

(l) A trust may not be terminated under this section if:

13 (1) The provisions of the governing instrument make the trust eligible 14 to qualify for the marital deduction for United States estate tax or for United States 15 gift tax purposes under the Internal Revenue Code, unless all beneficiaries agree that 16 all of the trust estate shall be distributed to the spouse of the creator of the trust; or

17 (2) The provisions of the governing instrument make the trust qualify, 18 in whole or in part, for a charitable deduction for United States estate tax, United 19 States gift tax, or United States income tax purposes under the Internal Revenue 20 Code, unless all beneficiaries agree that all of the trust estate shall be distributed to 21 one or more beneficiaries that qualify for the charitable deduction under the Internal 22 Revenue Code.]

23 [14–108.

(b)

(a) (1) In this section, "environmental law" means a federal, State, or local
law, rule, regulation, or ordinance that relates to the protection of the environment.

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(2) "Environmental law" includes Title 16 of the Environment Article.

- 27
- (1) To comply with an environmental law, a trustee may:

(i) Inspect property held by the trustee, including any type of
interest in a sole proprietorship, partnership, limited liability company, or corporation,
and any assets owned by a sole proprietorship, partnership, limited liability company,
or corporation, to determine compliance with an environmental law and respond to an
actual or potential environmental liability relating to the property;

1 (ii) Before or after the initiation of a claim or a governmental 2 enforcement action, take action necessary to prevent, abate, or otherwise remedy an 3 actual or potential environmental liability that affects a trust asset;

4 (iii) Settle or compromise at any time a claim against the trust 5 based on an alleged environmental liability that may be asserted by any person; and

6 (iv) Pay from the trust the costs of an inspection, review, study, 7 abatement, response, cleanup, or other remedial action that involves an environmental 8 liability.

9 (2) If a trustee acts prudently and in good faith, the trustee is not 10 liable to a person with an interest in assets of the trust held by the trustee for a 11 decrease in the value of the assets for taking action under this subsection or otherwise 12 taking action to comply with an environmental law or reporting requirement.

13 (3) Acceptance by the trustee of property or failure by the trustee to 14 take action under this subsection does not imply that there is or may be liability under 15 an environmental law with respect to any property.]

16 [14–109.

17 (a) None of the following powers conferred upon a trustee by the governing 18 instrument may be exercised by that trustee:

19 (1) The power to make any discretionary distributions of either 20 principal or income to or for the benefit of the trustee in the trustee's individual 21 capacity, unless limited by an ascertainable standard relating to the trustee's health, 22 education, support and maintenance, as defined in 26 U.S.C. §§ 2041 and 2514 and the 23 Treasury regulations promulgated under those sections;

(2) The power to make any discretionary distributions of either
principal or income to satisfy any of the trustee's legal obligations in the trustee's
individual capacity for support or other purposes;

27 (3) The power to make discretionary allocations in the trustee's favor
28 of receipts or expenses as between income and principal;

(4) Any power, in whatever capacity held, to remove or replace any
 trustee who holds any of the powers proscribed in this subsection; or

31 (5) The power to exercise any of the powers proscribed in this 32 subsection with regard to a beneficiary other than the trustee to the extent that such 33 beneficiary could exercise a similar prohibited power in connection with a trust which 34 benefits the trustee.

1 (b) If a trustee is prohibited by subsection (a)(1) of this section from 2 exercising a power conferred upon the trustee, the trustee may nevertheless exercise 3 the power except that the trustee's exercise of that power shall be limited by an 4 ascertainable standard relating to the trustee's health, education, support and 5 maintenance, as defined in 26 U.S.C. §§ 2041 and 2514 and the Treasury regulations 6 promulgated under those sections.

7 (c) If the governing instrument contains a power described under subsection 8 (a) of this section, and there is no trustee who can exercise such power, upon 9 application of any party in interest, a court may appoint a trustee who is not otherwise 10 disqualified under this section to exercise any such power during the period of time 11 that the court designates.

12

(d) This section does not apply if:

(1) As a result of application of subsection (a) of this section, a marital
deduction for the trust property would not be allowed to a spouse who is a trustee and
to whom a marital deduction would otherwise be allowed under the Internal Revenue
Code; or

17 (2) The trust is revocable or amendable, during the time that the trust 18 remains revocable or amendable.

19

(e)

(1) In this subsection, "parties in interest" means:

20

(i) Each trustee then serving; and

21 (ii) Each income beneficiary and remainder beneficiary then in 22 existence or, if such beneficiary has not attained majority or is otherwise 23 incapacitated, the beneficiary's legal representative under applicable law or the 24 beneficiary's donee under a durable power of attorney that is sufficient to grant such 25 authority.

26 (2) Subject to the provisions of subsection (d) of this section, this 27 section applies to:

(i) Any trust created under a governing instrument executed
after September 30, 1995, unless the terms of the governing instrument provide
expressly that this section does not apply; and

(ii) Any trust created under a governing instrument executed
before October 1, 1995, unless all parties in interest elect affirmatively not to be
subject to the application of this section on or before the later of October 1, 1998, or 3
years after the date on which the trust becomes irrevocable.

1 (f) The affirmative election required under subsection (e) of this section must $\mathbf{2}$ be made through a written declaration signed by the interested person and delivered 3 to the trustee. 4 [14–110. $\mathbf{5}$ The following persons may exercise trust or fiduciary powers in this (a) 6 State: 7 (1)An individual: 8 (2)A trust company as defined in § 1–101 of this article; 9 An organization exempt from taxation under § 501(c) of the (3)10 Internal Revenue Code; and 11 Subject to subsection (b) of this section, a bank, trust company, or (4)12savings bank, other than one described in paragraph (2) of this subsection, that is: 13 Organized under the laws of another state and authorized to (i) 14exercise trust or fiduciary powers in the state where its principal place of business is 15located: or 16 (ii) Organized under the laws of the United States and 17authorized to exercise trust or fiduciary powers under federal law. (b)A bank, trust company, or savings bank described in subsection 18 (1)19(a)(4) of this section may exercise trust or fiduciary powers in this State only if the 20laws of the state where its principal place of business is located authorize a bank, trust 21company, or savings bank from this State to exercise trust or fiduciary powers in that 22state. 23(2)A bank, trust company, or savings bank authorized to exercise 24trust powers under subsection (a)(4) of this section shall file with the Commissioner of Financial Regulation, prior to exercising trust powers in this State, information 2526sufficient to identify: 27The correct corporate name of the bank, trust company, or (i) 28savings bank; 29An address and telephone number of a contact person for the (ii) 30 bank, trust company, or savings bank; A resident agent; and 31 (iii) 32 (iv) Any additional information considered necessary by the 33 Commissioner for protection of the public.

1 [14–111.

2 (a) (1) In this section, "beneficiary" means an ascertainable person who 3 has a present or future interest in a trust estate.

4

(2) "Beneficiary" includes:

5 (i) If the beneficiary is a minor, the beneficiary's natural or 6 legal guardian; or

(ii) If the beneficiary is a disabled person, as defined in § 13–101
of this article, any person acting on behalf of the beneficiary under a guardianship,
conservatorship, or committee.

10 (b) A trustee may donate a conservation easement on any real property, or 11 consent to the donation of a conservation easement on any real property by a personal 12 representative of an estate of which the trustee is a legatee, in order to obtain the 13 benefit of the estate tax exclusion allowed under § 2031(c) of the United States 14 Internal Revenue Code of 1986, as amended, if:

15 (1) The governing instrument authorizes or directs the donation of a 16 conservation easement on the real property; or

17 (2) Each beneficiary who has an interest in the real property that 18 would be affected by the conservation easement consents in writing to the donation.]

19 [14–112.

20 (a) A trust may be created to provide for the care of an animal alive during 21 the lifetime of the settlor.

22 (b) A trust authorized by this section terminates:

(1) If created to provide for the care of one animal alive during the
lifetime of the settlor, on the death of the animal; or

(2) If created to provide for the care of more than one animal alive
during the lifetime of the settlor, on the death of the last surviving animal.

(c) (1) A trust authorized by this section may be enforced by a person
appointed under the terms of the trust or, if no person is appointed, by a person
appointed by the court.

30 (2) A person having an interest in the welfare of an animal the care for 31 which a trust is established may request the court to appoint a person to enforce the 32 trust or to remove a person appointed.

16

Except to the extent that the court may determine that the value of

 $\mathbf{2}$ a trust authorized by this section exceeds the amount required for the use intended by 3 the trust, the property of the trust may be applied only to the intended use of the 4 trust. $\mathbf{5}$ (2)Except as otherwise provided under the terms of the trust, 6 property not required for the intended use of the trust shall be distributed: 7 (i) To the settlor, if living; or 8 (ii) If the settlor is deceased, to the successors in interest of the 9 settlor. 10 [14–113. 11 In this section, "proceeds" means: (a) 12(1)Property acquired by the trustee upon the sale, lease, license, 13 exchange, or other disposition of property originally conveyed by a husband and wife 14to a trustee or trustees; 15Property collected by the trustee on, or distributed on account of, (2)16property originally conveyed by a husband and wife to a trustee or trustees; 17Rights arising out of property originally conveyed by a husband (3)and wife to a trustee: 18 19(4)Claims arising out of the loss, nonconformity, or interference with 20the use of, defects or infringement of rights in, or damage to, property originally conveyed by a husband and wife to a trustee: 21

(5) Insurance payable by reason of the loss or nonconformity of,
defects or infringement of rights in, or damage to, property originally conveyed by a
husband and wife to a trustee; or

(6) Property held by the trustee that is otherwise traceable to property
originally conveyed by a husband and wife to a trustee or the property proceeds
described in items (1) through (5) of this subsection.

(b) Any property of a husband and wife that was held by them as tenants by the entirety and subsequently conveyed to the trustee or trustees of one or more trusts, and the proceeds of that property, shall have the same immunity from the claims of their separate creditors as would exist if the husband and wife had continued to hold the property or its proceeds as tenants by the entirety, as long as:

33 (1) The

1

(d)

(1)

The husband and wife remain married;

1 (2) The property or its proceeds continues to be held in trust by the 2 trustee or trustees or their successors in trust;

3 (3) Both the husband and the wife are beneficiaries of the trust or 4 trusts; and

5 (4) The trust instrument, deed, or other instrument of conveyance 6 provides that this section shall apply to the property or its proceeds.

7 (c) (1) After the death of the first of the husband and wife to die, all 8 property held in trust that was immune from the claims of their separate creditors 9 under subsection (b) of this section immediately prior to the individual's death shall 10 continue to have the same immunity from the claims of the decedent's separate 11 creditors as would have existed if the husband and wife had continued to hold the 12 property conveyed in trust, or its proceeds, as tenants by the entirety.

13 (2) To the extent that the surviving spouse remains a beneficiary of 14 the trust, the property that was immune from the claims of the separate creditors of 15 the decedent under paragraph (1) of this subsection shall be subject to the claims of 16 the separate creditors of the surviving spouse.

17 (d) The immunity from the claims of separate creditors under subsections (b) 18 and (c) of this section may be waived as to any specific creditor or any specifically 19 described trust property, including all separate creditors of a husband and wife or all 20 former tenancy by the entirety property conveyed to the trustee or trustees, by:

- 21
- (1) The express provisions of a trust instrument; or
- 22

(2)

The written consent of both the husband and the wife.

(e) (1) Except as provided in paragraph (2) of this subsection, immunity
from the claims of separate creditors under subsections (b) and (c) of this section shall
be waived if a trustee executes and delivers a financial statement for the trust that
fails to disclose the requested identity of property held in trust that is immune from
the claims of separate creditors.

- (2) Immunity is not waived under this subsection if the identity of the
 property that is immune from the claims of separate creditors is otherwise reasonably
 disclosed by:
- 31 (i) A publicly recorded deed or other instrument of conveyance
 32 by the husband and wife to the trustee;
- (ii) A written memorandum by the husband and wife, or by a
 trustee, that is recorded among the land records or other public records in the county
 or other jurisdiction where the records of the trust are regularly maintained; or

1 The terms of the trust instrument, including any schedule or (iii) $\mathbf{2}$ exhibit attached to the trust instrument, if a copy of the trust instrument is provided 3 with the financial statement. 4 (3)A waiver under this subsection shall be effective only as to: $\mathbf{5}$ (i) The person to whom the financial statement is delivered by 6 the trustee; 7 (ii) The particular trust property held in trust for which the 8 immunity from the claims of separate creditors is insufficiently disclosed on the 9 financial statement: and 10 (iii) The transaction for which the disclosure was sought. 11 (f) In any dispute relating to the immunity of trust property from the claims 12of a separate creditor of a husband or wife, the trustee has the burden of proving the 13 immunity of the trust property from the creditor's claims. 14After a conveyance to a trustee described in subsection (b) of this section, (g)15the property transferred shall no longer be held by the husband and wife as tenants by 16 the entirety. 17This section may not be construed to affect existing State law with (h) 18 respect to tenancies by the entirety. This section applies only to tenancy by the entirety property conveyed to 19 (i) 20a trustee or trustees on or after October 1, 2010. 21**[**14–114. 22In this section the following words have the meanings indicated. (a) (1)23(2)"Consideration" does not include the amount of any obligation 24under a mortgage or deed of trust encumbering the transferred property. "Trust" does not include: 25(3)26(i) A real estate investment trust as defined in § 8-101 of the 27Corporations and Associations Article; or 28(ii) A statutory trust as defined in § 12–101 of the Corporations 29and Associations Article. 30 A recordation tax, transfer tax, or any other State or local excise tax may (b)31not be imposed on the transfer of real property or an interest in real property without

consideration or on the recordation of an instrument that transfers real property or aninterest in real property without consideration if:

- 3
- (1) The transfer is to a trust; or
- 4

- -----
- (2) The transfer is from a trust to one or more beneficiaries and:

5 (i) The transfer is made to a person who would be exempt from 6 tax under Title 12 or Title 13 of the Tax – Property Article if the transfer had been 7 made to that person directly by the grantor; or

8 (ii) The transfer is made during the life of the grantor of the 9 trust and the trustee of the trust originally acquired the real property for adequate 10 consideration.]

11 [14–115.

(a) In this section, "special needs trust" and "supplemental needs trust"include a trust funded by a trust beneficiary or by a third party.

14 (b) It is the policy of the State to encourage the use of a special needs trust or 15 supplemental needs trust by an individual of any age with disabilities to preserve 16 funds to provide for the needs of the individual not met by public benefits and to 17 enhance quality of life.

18 (c) (1) Each State agency that provides public benefits to individuals of 19 any age with disabilities through means-tested programs, including the Medical 20 Assistance Program, shall adopt regulations that:

21 (i) Are not more restrictive than existing federal law, 22 regulations, or policies with regard to the treatment of a special needs trust or 23 supplemental needs trust, including a trust defined in 42 U.S.C. § 1396p(c)(2) and 24 (d)(4);

(ii) Are not more restrictive than any State law regarding
trusts, including any State law regarding the reasonable exercise of discretion by a
trustee, guardian, or conservator in the best interests of the beneficiary; and

28 (iii) Do not require disclosure of a beneficiary's personal or 29 confidential information without the consent of the beneficiary.

30(2)The regulations described in paragraph (1) of this subsection shall31allow:

32 (i) An individual account in a pooled asset special needs trust
 33 to be funded without financial limit;

20

1 (ii) A fund in a special needs trust, supplemental needs trust, or $\mathbf{2}$ pooled asset special needs trust to be used for the sole benefit of the beneficiary 3 including, at the discretion of the trustee, distributions for food, shelter, utilities, and 4 transportation; $\mathbf{5}$ (iii) An individual to establish or fund an individual account in a 6 pooled asset special needs trust without an age limit or a transfer penalty; 7(iv) An individual to fund a special needs trust or supplemental 8 needs trust for the individual's child with disabilities without a transfer penalty and 9 regardless of the child's age; and 10 All legally assignable income or resources to be assigned to a (v)11 special needs trust, supplemental needs trust, or pooled asset special needs trust 12without limit. 13(3)Nothing in this subsection may be interpreted to require a court 14order to authorize a disbursement from a special or supplemental needs trust. 15(d)(1)A determination of the Internal Revenue Service regarding the nonprofit status of an organization operating a pooled asset special needs trust shall 1617be sufficient to satisfy the nonprofit requirement of 42 U.S.C. § 1396p(d)(4)(C). 18 (2)A State agency may not impose additional requirements on an organization described in paragraph (1) of this subsection for the purpose of qualifying 1920or disgualifying the organization from offering a pooled asset special needs trust. 21(e) A regulation adopted by a State agency regarding pooled special needs 22trusts shall apply only to those trust beneficiaries who are State residents or who 23receive public benefits funded by the State.] 24[14–116. 25(a) An individual who creates a trust may not be considered the settlor of 26that trust with regard to the individual's interest in the trust if: 27(1)That interest is the authority of the trustee under the trust 28instrument or any other provision of law to pay or reimburse the individual for any tax 29on trust income or trust principal that is payable by the individual under the law 30 imposing that tax; or 31All of the following apply: (2)32The individual creates or has created the trust for the (i) 33 benefit of the individual's spouse;

$1 \\ 2$	(ii) The trust is treated as qualified terminable interest property under § 2523(f) of the Internal Revenue Code of 1986; and
$\frac{3}{4}$	(iii) The individual's interest in the trust income, trust principal, or both follows the termination of the spouse's prior interest in the trust.
$5 \\ 6$	(b) A creditor of an individual described in subsection (a) of this section may not attach, exercise, reach, or otherwise compel distribution of:
7	(1) Any principal or income of the trust;
8 9 10	(2) Any principal or income of any other trust to the extent that the property held in the other trust is attributable to a trust described in subsection (a)(2) of this section;
11	(3) The individual's interest in the trust; or
$12 \\ 13 \\ 14$	(4) The individual's interest in any other trust to the extent that the property held in the other trust is attributable to a trust described in subsection (a)(2) of this section.
15 16	(c) This section may not be construed to affect any State law with respect to a fraudulent transfer by an individual to a trustee.]
17	TITLE 14.5. MARYLAND TRUST ACT.
18	SUBTITLE 1. IN GENERAL.
19	14.5–101.
20	THIS TITLE MAY BE CITED AS THE MARYLAND TRUST ACT.
21	14.5–102.
22 23 24 25 26	This title applies to express charitable or noncharitable trusts and trusts created in accordance with a statute (including the Maryland Discretionary Trust Act, unless otherwise provided by the statute), judgment, or decree that requires the trust to be administered in the manner of an express trust.
27	14.5–103.
28 29	(A) IN THIS TITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

1 (B) "ACTION", WITH RESPECT TO AN ACT OF A TRUSTEE, INCLUDES A 2 FAILURE TO ACT.

3 (C) "ASCERTAINABLE STANDARD" MEANS A STANDARD RELATING TO
4 AN INDIVIDUAL'S HEALTH, EDUCATION, SUPPORT, OR MAINTENANCE WITHIN
5 THE MEANING OF § 2041(B)(1)(A) OR § 2514(C)(1) OF THE INTERNAL REVENUE
6 CODE OF 1986, AS IN EFFECT ON OCTOBER 1, 2014 JANUARY 1, 2015.

7 (D) "BENEFICIARY" MEANS A PERSON THAT:

8 (1) THAT HAS A PRESENT OR FUTURE BENEFICIAL INTEREST IN A 9 TRUST, VESTED OR CONTINGENT; OR

- 10 (2) IN A CAPACITY OTHER THAN THAT OF A TRUSTEE, HOLDS A
 11 POWER OF APPOINTMENT OVER TRUST PROPERTY.
- 12 (E) "CHARITABLE TRUST" MEANS A TRUST, OR PORTION OF A TRUST, 13 CREATED FOR A CHARITABLE PURPOSE DESCRIBED IN § 14–301(B) OF THIS 14 ARTICLE.

15 **(F) (1) "DISCRETIONARY DISTRIBUTION PROVISION" MEANS A** 16 PROVISION IN A TRUST THAT PROVIDES THAT THE TRUSTEE HAS DISCRETION, 17 OR WORDS OF SIMILAR IMPORT, TO DETERMINE ONE OR MORE OF THE 18 FOLLOWING:

19 (I) WHETHER TO DISTRIBUTE TO OR FOR THE BENEFIT OF
20 AN INDIVIDUAL OR A CLASS OF BENEFICIARIES THE INCOME OR PRINCIPAL OR
21 BOTH OF THE TRUST;

(II) THE AMOUNT, IF ANY, OF THE INCOME OR PRINCIPAL
OR BOTH OF THE TRUST TO DISTRIBUTE TO OR FOR THE BENEFIT OF AN
INDIVIDUAL OR A CLASS OF BENEFICIARIES;

- (III) WHICH, IF ANY, AMONG A CLASS OF BENEFICIARIES
 WILL RECEIVE INCOME OR PRINCIPAL OR BOTH OF THE TRUST;
- 27(IV)WHETHER THE DISTRIBUTION OF TRUST ASSETS IS28FROM INCOME OR PRINCIPAL OR BOTH OF THE TRUST; OR

(V) WHEN TO PAY INCOME OR PRINCIPAL, EXCEPT THAT A
POWER TO DETERMINE WHEN TO DISTRIBUTE INCOME OR PRINCIPAL WITHIN
OR WITH RESPECT TO A CALENDAR OR TAXABLE YEAR OF THE TRUST IS NOT A
DISCRETIONARY DISTRIBUTION PROVISION IF THE DISTRIBUTION MUST BE
MADE.

(2) "DISCRETIONARY DISTRIBUTION PROVISION" INCLUDES A 1 $\mathbf{2}$ **PROVISION IN A TRUST INSTRUMENT THAT:** 3 **(I)** PROVIDES ONE OR MORE STANDARDS OR OTHER 4 GUIDANCE FOR THE EXERCISE OF THE DISCRETION OF THE TRUSTEE; OR $\mathbf{5}$ **(II) CONTAINS A SPENDTHRIFT PROVISION.** "ENVIRONMENTAL LAW" MEANS A FEDERAL, STATE, OR 6 (G) (1) 7 LOCAL LAW, RULE, REGULATION, OR ORDINANCE THAT RELATES TO THE **PROTECTION OF THE ENVIRONMENT.** 8 9 "ENVIRONMENTAL LAW" INCLUDES TITLE 16 OF THE (2) 10 **ENVIRONMENT ARTICLE.** 11 **(H)** "GENERAL POWER OF APPOINTMENT", § SUBJECT TO 14.5–507(B)(7) OF THIS TITLE, MEANS A POWER OF APPOINTMENT THAT: 12 13(1) BY THE TERMS OF THE TRUST SPECIFICALLY AUTHORIZES 14THE HOLDER TO DIRECT TRUST PROPERTY TO THE HOLDER, THE ESTATE OF 15THE HOLDER, OR THE CREDITORS OF THE HOLDER; 16(2) IS HELD IN A CAPACITY OTHER THAN AS A TRUSTEE; 17(3) IS NOT LIMITED BY AN ASCERTAINABLE STANDARD; AND 18 (4) IS EXERCISABLE BY THE HOLDER OR HOLDERS WITHOUT THE 19 CONSENT OF ANOTHER PERSON. 20(1) "GUARDIAN OF THE PERSON" MEANS A PERSON APPOINTED **(I)** 21BY THE COURT OR, IN THE CASE OF A MINOR WITH NO LIVING PARENT, BY THE 22PROBATED WILL OF A PARENT OF THE MINOR, TO MAKE DECISIONS REGARDING 23THE SUPPORT, CARE, EDUCATION, HEALTH, AND WELFARE OF A MINOR OR AN 24ADULT INDIVIDUAL. 25(2) "GUARDIAN OF THE PERSON" DOES NOT INCLUDE A 26**GUARDIAN AD LITEM.** 27(J) "GUARDIAN OF THE PROPERTY" MEANS A PERSON APPOINTED BY THE COURT TO ADMINISTER THE ESTATE OF A MINOR OR AN ADULT INDIVIDUAL. 2829"INTERESTS OF THE BENEFICIARIES" MEANS THE BENEFICIAL **(K)** 30 INTERESTS PROVIDED IN THE TERMS OF THE TRUST.

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24

1 (L) "JURISDICTION", WITH RESPECT TO A GEOGRAPHIC AREA, 2 INCLUDES A STATE OR COUNTRY.

3 (M) (1) "MANDATORY DISTRIBUTION PROVISION" MEANS A 4 PROVISION IN A TRUST THAT REQUIRES THE TRUSTEE TO MAKE A 5 DISTRIBUTION OF INCOME OR PRINCIPAL TO A BENEFICIARY, INCLUDING A 6 DISTRIBUTION ON TERMINATION OF THE TRUST.

7 (2) "MANDATORY DISTRIBUTION PROVISION" DOES NOT INCLUDE
8 A PROVISION IN A TRUST THAT ALLOWS THE TRUSTEE TO MAKE A DISTRIBUTION
9 SUBJECT TO THE EXERCISE OF THE DISCRETION OF THE TRUSTEE EVEN IF:

10(I)THE DISCRETION IS EXPRESSED IN THE FORM OF A11STANDARD OF DISTRIBUTION; OR

12(II) THE TERMS OF THE TRUST AUTHORIZING A13DISTRIBUTION COUPLE LANGUAGE OF DISCRETION WITH LANGUAGE OF14DIRECTION.

- 15 (N) "PERSON" MEANS:
- 16 **(1) A**N **INDIVIDUAL**;
- 17 **(2) A CORPORATION**;
- 18 (3) A BUSINESS TRUST;
- 19 **(4)** AN ESTATE;
- 20 (5) A TRUST;
- 21 (6) A PARTNERSHIP;
- 22 (7) A LIMITED LIABILITY COMPANY;
- 23 **(8) AN ASSOCIATION;**
- **24** (9) A JOINT VENTURE;
- 25 (10) A GOVERNMENT;
- 26 (11) A GOVERNMENTAL SUBDIVISION;
- 27 (12) AN AGENCY;

1	(13) AN INSTRUMENTALITY;
2	(14) A PUBLIC CORPORATION; OR
3	(15) ANY OTHER LEGAL OR COMMERCIAL ENTITY.
4 5	(O) "POWER OF APPOINTMENT" MEANS THE AUTHORITY TO DESIGNATE THE RECIPIENT OR RECIPIENTS OF BENEFICIAL INTERESTS IN PROPERTY.
6 7 8 9	(P) "POWER OF WITHDRAWAL", SUBJECT TO § 14.5–507(B) OF THIS TITLE, MEANS A PRESENTLY EXERCISABLE POWER TO WITHDRAW TRUST PROPERTY FROM A TRUST FOR THE USE OR BENEFIT OF THE POWER HOLDER, OTHER THAN A POWER:
10 11	(1) EXERCISABLE BY A TRUSTEE AND LIMITED BY AN ASCERTAINABLE STANDARD;
12 13	(2) EXERCISABLE BY ANOTHER PERSON ONLY ON CONSENT OF THE TRUSTEE OR A PERSON HOLDING AN ADVERSE INTEREST; OR
$\begin{array}{c} 14 \\ 15 \end{array}$	(3) EXERCISABLE ONLY WITH RESPECT TO TRUST PROPERTY HAVING A VALUE THAT IS LESS THAN OR EQUAL TO THE GREATEST OF:
$\frac{16}{17}$	(I) THE AMOUNT SPECIFIED IN § 2041(B)(2) OR § 2514(E) OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED;
18 19 20 21	(II) THE AMOUNT SPECIFIED IN § 2503(B) OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED, IF THE DONOR OF THE PROPERTY SUBJECT TO THE POWER OF WITHDRAWAL IS UNMARRIED AT THE TIME OF THE TRANSFER OF THE PROPERTY TO THE TRUST; OR
22 23 24 25	(III) TWICE THE AMOUNT SPECIFIED IN § 2503(B) OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED, IF THE DONOR OF THE PROPERTY SUBJECT TO THE POWER OF WITHDRAWAL IS MARRIED AT THE TIME OF THE TRANSFER OF THE PROPERTY TO THE TRUST.
26 27 28	(Q) "PROPERTY" MEANS ANYTHING THAT MAY BE THE SUBJECT OF OWNERSHIP, WHETHER REAL OR PERSONAL, LEGAL OR EQUITABLE, OR AN INTEREST IN THE THING.
29	(R) (1) "QUALIFIED BENEFICIARY" MEANS A BENEFICIARY THAT ON

30 THE DATE THE QUALIFICATION OF THE BENEFICIARY IS DETERMINED:

1 (I) IS A DISTRIBUTEE OR PERMISSIBLE DISTRIBUTEE OF 2 TRUST INCOME OR PRINCIPAL;

3 (II) WOULD BE A DISTRIBUTEE OR PERMISSIBLE
4 DISTRIBUTEE OF TRUST INCOME OR PRINCIPAL IF THE INTERESTS OF THE
5 DISTRIBUTEES DESCRIBED IN ITEM (I) OF THIS PARAGRAPH TERMINATED ON
6 THAT DATE WITHOUT CAUSING THE TRUST TO TERMINATE; OR

7 (III) WOULD BE A DISTRIBUTEE OR PERMISSIBLE
8 DISTRIBUTEE OF TRUST INCOME OR PRINCIPAL IF THE TRUST TERMINATED ON
9 THAT DATE AND NO POWER OF APPOINTMENT WAS EXERCISED.

10(2) "QUALIFIED BENEFICIARY" DOES NOT INCLUDE AN11APPOINTEE UNDER THE WILL OF A LIVING PERSON OR THE OBJECT OF AN12UNEXERCISED INTER VIVOS POWER OF APPOINTMENT.

(S) "REVOCABLE", AS APPLIED TO A TRUST, MEANS REVOCABLE BY THE
 SETTLOR WITHOUT THE CONSENT OF THE TRUSTEE OR A PERSON HOLDING AN
 ADVERSE INTEREST.

16(T)(1)"SETTLOR" MEANS A PERSON, INCLUDING A TESTATOR, THAT17CREATES OR CONTRIBUTES PROPERTY TO A TRUST.

18 (2) "SETTLOR" INCLUDES A PERSON THAT, WITH OTHER 19 SETTLORS, CREATES OR CONTRIBUTES PROPERTY TO A TRUST IN WHICH CASE 20 EACH SUCH PERSON IS A SETTLOR OF THE PORTION OF THE TRUST PROPERTY 21 ATTRIBUTABLE TO THE CONTRIBUTION OF THAT PERSON EXCEPT TO THE 22 EXTENT ANOTHER PERSON HAS THE POWER TO REVOKE OR WITHDRAW THAT 23 PORTION.

24 (U) "SPENDTHRIFT PROVISION" MEANS A TERM OF A TRUST THAT:

25(1)RESTRAINS BOTH VOLUNTARY AND INVOLUNTARY TRANSFER26OF THE INTEREST OF A BENEFICIARY; OR

(2) RESTRAINS INVOLUNTARY TRANSFER OF THE INTEREST OF A
BENEFICIARY AND PERMITS VOLUNTARY TRANSFER OF THE INTEREST OF A
BENEFICIARY ONLY WITH THE CONSENT OF A PERSON THAT IS NOT A
BENEFICIARY.

(V) (1) "STATE" MEANS A STATE OF THE UNITED STATES, THE
 DISTRICT OF COLUMBIA, PUERTO RICO, THE UNITED STATES VIRGIN ISLANDS,
 OR ANY TERRITORY OR INSULAR POSSESSION SUBJECT TO THE JURISDICTION
 OF THE UNITED STATES.

1(2) "STATE" INCLUDES A NATIVE AMERICAN TRIBE OR BAND2RECOGNIZED BY FEDERAL LAW OR FORMALLY ACKNOWLEDGED BY A STATE.

3 (W) (1) "SUPPORT PROVISION" MEANS A MANDATORY DISTRIBUTION 4 PROVISION IN A TRUST THAT PROVIDES THAT THE TRUSTEE SHALL DISTRIBUTE 5 INCOME OR PRINCIPAL OR BOTH FOR THE HEALTH, EDUCATION, SUPPORT, OR 6 MAINTENANCE OF A BENEFICIARY, OR LANGUAGE OF SIMILAR IMPORT.

(2) "SUPPORT PROVISION" DOES NOT INCLUDE A PROVISION IN A
TRUST THAT PROVIDES THAT A TRUSTEE HAS DISCRETION WHETHER TO
DISTRIBUTE INCOME OR PRINCIPAL OR BOTH FOR THE PURPOSES UNDER
PARAGRAPH (1) OF THIS SUBSECTION OR TO SELECT FROM AMONG A CLASS OF
BENEFICIARIES TO RECEIVE DISTRIBUTIONS IN ACCORDANCE WITH THE TRUST
PROVISION.

(X) "TERMS OF A TRUST" MEANS THE MANIFESTATION OF THE INTENT
OF THE SETTLOR REGARDING THE PROVISIONS OF A TRUST AS EXPRESSED IN
THE TRUST INSTRUMENT OR AS MAY BE ESTABLISHED BY OTHER EVIDENCE
THAT WOULD BE ADMISSIBLE IN A JUDICIAL PROCEEDING.

17 (Y) "TRUST INSTRUMENT" MEANS AN INSTRUMENT EXECUTED BY THE 18 SETTLOR THAT CONTAINS TERMS OF THE TRUST, INCLUDING AMENDMENTS TO 19 THE TRUST.

20 (Z) "TRUSTEE" INCLUDES AN ORIGINAL, AN ADDITIONAL, AND A 21 SUCCESSOR TRUSTEE AND A COTRUSTEE.

22 **14.5–104.**

23 **A PERSON HAS KNOWLEDGE OF A FACT IF THE PERSON:**

24

(1) HAS ACTUAL KNOWLEDGE OF THE FACT;

25 (2) HAS RECEIVED A NOTICE OR NOTIFICATION OF THE FACT; OR

26 (3) FROM ALL THE FACTS AND CIRCUMSTANCES KNOWN TO THE 27 PERSON AT THE TIME, KNOWS OR SHOULD KNOW THE FACT.

28 **14.5–105.**

29THE TERMS OF A TRUST PREVAIL OVER A PROVISION OF THIS TITLE,30EXCEPT:

1	(1) THE REQUIREMENTS FOR CREATING A TRUST;
2	(2) THE DUTY OF A TRUSTEE TO ACT REASONABLY UNDER THE
3	CIRCUMSTANCES AND IN ACCORDANCE WITH THE TERMS AND PURPOSES OF
4	THE TRUST AND THE INTERESTS OF THE BENEFICIARIES;
5	(3) THE REQUIREMENT THAT A TRUST AND THE TERMS OF THE
6	TRUST BE FOR THE BENEFIT OF THE BENEFICIARIES OF THE TRUST AND THAT
7	THE TRUST HAVE A PURPOSE THAT IS LAWFUL, NOT CONTRARY TO PUBLIC
8	POLICY, AND POSSIBLE TO ACHIEVE;
9	(4) THE POWER OF THE COURT TO MODIFY OR TERMINATE A
10	TRUST UNDER §§ 14.5–410, 14.5–411, 14.5–413, AND 14.5–414 OF THIS TITLE;
11	(5) THE RIGHTS OF CERTAIN CREDITORS AND ASSIGNEES TO
11	REACH A TRUST AS PROVIDED IN SUBTITLE 5 OF THIS TITLE;
13	(6) THE POWER OF THE COURT UNDER § $14.5-702$ OF THIS TITLE
14	TO REQUIRE, DISPENSE WITH, MODIFY OR TERMINATE A BOND;
15	(7) THE SUBJECT MATTER JURISDICTION AND VENUE FOR
16	COMMENCING A PROCEEDING AS PROVIDED BY THE LAWS OF THIS STATE;
17	(8) THE POWER OF THE COURT UNDER § 14.5–708(A) OF THIS
18	TITLE TO INCREASE OR DECREASE THE COMMISSIONS OF A TRUSTEE;
19	(9) THE DUTIES TO PROVIDE INFORMATION, COPIES, AND
20	NOTICES SPECIFIED UNDER § 14.5–813(A) AND (C) OF THIS TITLE;
21	(10) THE DUTY UNDER § 14.5-813(A) AND (B) OF THIS TITLE TO:
00	
$\frac{22}{23}$	(I) <u>NOTIFY QUALIFIED BENEFICIARIES OF AN</u> IRREVOCABLE TRUST WHO HAVE ATTAINED 25 YEARS OF AGE OF THE
$\frac{23}{24}$	EXISTENCE OF THE TRUST, THE IDENTITY OF THE TRUSTEE, AND THEIR RIGHT
25	TO REQUEST TRUSTEE'S REPORTS AND A COPY OF THE TRUST; AND
26	(II) <u>RESPOND TO THE REQUEST OF A QUALIFIED</u>
27	BENEFICIARY OF AN IRREVOCABLE TRUST FOR REPORTS BY THE TRUSTEE AND
28 29	OTHER INFORMATION REASONABLY RELATED TO THE ADMINISTRATION OF THE TRUST;
_ 0	
30	(10) (11) THE EFFECT OF AN EXCULPATORY TERM UNDER §

31 14.5–906 OF THIS TITLE;

	30 SENATE BILL 240
$\frac{1}{2}$	(11) (12) THE RIGHTS UNDER §§ 14.5–908 THROUGH 14.5–910 OF THIS TITLE OF A PERSON OTHER THAN A TRUSTEE OR BENEFICIARY; <u>AND</u>
$\frac{3}{4}$	(12) Periods of Limitation for commencing a judicial proceeding; and
5 6	(13) THE POWER OF THE COURT TO TAKE AN ACTION AND EXERCISE JURISDICTION AS MAY BE NECESSARY IN THE INTERESTS OF JUSTICE.
7	14.5–106.
$8\\9\\10$	THE COMMON LAW OF TRUSTS AND PRINCIPLES OF EQUITY SUPPLEMENT THIS TITLE, EXCEPT TO THE EXTENT MODIFIED BY THIS TITLE OR ANOTHER STATUTE OF THIS STATE.
11	14.5–107. RESERVED.
12	14.5–108. Reserved.
13	(A) WITHOUT PRECLUDING OTHER MEANS FOR ESTABLISHING A
14	SUFFICIENT CONNECTION WITH THE DESIGNATED JURISDICTION, TERMS OF A
15 16	TRUST DESIGNATING THE PRINCIPAL PLACE OF ADMINISTRATION ARE VALID AND CONTROLLING IF:
10	AND CONTROLLING IF.
17	(1) THE PRINCIPAL PLACE OF BUSINESS OF A TRUSTEE IS
18	LOCATED IN OR A TRUSTEE IS A RESIDENT OF THE DESIGNATED JURISDICTION;
19	<u>OR</u>
20	(2) All or part of the administration of the trust
$\frac{20}{21}$	OCCURS IN THE DESIGNATED JURISDICTION.
22	(B) <u>A TRUSTEE IS UNDER A CONTINUING DUTY TO ADMINISTER THE</u>
23	TRUST AT A PLACE APPROPRIATE TO ITS PURPOSES, ITS ADMINISTRATION, AND
24	THE INTERESTS OF THE BENEFICIARY.
25	(C) WITHOUT PRECLUDING THE RIGHT OF THE COURT TO ORDER,
26	APPROVE, OR DISAPPROVE A TRANSFER, THE TRUSTEE, IN FURTHERANCE OF
27	THE DUTY UNDER SUBSECTION (B) OF THIS SECTION, MAY TRANSFER THE
28	PRINCIPAL PLACE OF ADMINISTRATION OF THE TRUST TO ANOTHER STATE OR A
29	JURISDICTION OUTSIDE THE UNITED STATES.
30	(D) (1) THE TRUSTEE SHALL NOTIFY THE QUALIFIED BENEFICIARIES
31	OF A PROPOSED TRANSFER OF A TRUST'S PRINCIPAL PLACE OF
32	ADMINISTRATION NOT LESS THAN 60 DAYS BEFORE INITIATING THE TRANSFER.

THE NOTICE OF PROPOSED TRANSFER UNDER PARAGRAPH 1 (2) $\mathbf{2}$ (1) OF THIS SUBSECTION MUST INCLUDE: 3 **(I)** THE NAME OF THE JURISDICTION TO WHICH THE 4 PRINCIPAL PLACE OF ADMINISTRATION IS TO BE TRANSFERRED; $\mathbf{5}$ **(II)** THE ADDRESS AND TELEPHONE NUMBER AT THE NEW 6 LOCATION AT WHICH THE TRUSTEE CAN BE CONTACTED; 7(III) AN EXPLANATION OF THE REASONS FOR THE PROPOSED 8 TRANSFER; 9 (IV) THE DATE ON WHICH THE PROPOSED TRANSFER IS 10 ANTICIPATED TO OCCUR; AND THE DATE, NOT LESS THAN 60 DAYS AFTER THE GIVING 11 **(V)** 12 OF THE NOTICE, BY WHICH THE QUALIFIED BENEFICIARY MUST NOTIFY THE 13 TRUSTEE OF AN OBJECTION TO THE PROPOSED TRANSFER. 14 THE AUTHORITY OF A TRUSTEE UNDER THIS SECTION TO TRANSFER **(E)** 15A TRUST'S PRINCIPAL PLACE OF ADMINISTRATION TERMINATES IF A QUALIFIED BENEFICIARY NOTIFIES THE TRUSTEE OF AN OBJECTION TO THE PROPOSED 16 17TRANSFER ON OR BEFORE THE DATE SPECIFIED IN THE NOTICE. 18 14.5 - 109.19 NOTICE TO A PERSON UNDER THIS TITLE OR THE SENDING OF (A) (1) 20A DOCUMENT TO A PERSON UNDER THIS TITLE SHALL BE ACCOMPLISHED IN A MANNER REASONABLY SUITABLE UNDER THE CIRCUMSTANCES AND LIKELY TO 2122**RESULT IN RECEIPT OF THE NOTICE OR DOCUMENT.** 23(2) PERMISSIBLE METHODS OF NOTICE TO A PERSON OR FOR SENDING A DOCUMENT TO A PERSON UNDER THIS TITLE INCLUDE FIRST-CLASS 2425MAIL, PERSONAL DELIVERY, OR DELIVERY TO THE LAST KNOWN PLACE OF **RESIDENCE OR PLACE OF BUSINESS OF THE PERSON.** 2627(3) **THIS PARAGRAPH APPLIES TO: (I)** 281. THE PROPOSED TERMINATION OF A TRUST; 292. THE PROPOSED MODIFICATION OF THE 30 ADMINISTRATIVE OR DISPOSITIVE TERMS OF A TRUST;

	32 SENATE BILL 240
$rac{1}{2}$	3. THE PROPOSED COMBINATION OF TWO OR MORE TRUSTS INTO A SINGLE TRUST;
$\frac{3}{4}$	4. The proposed division of a trust into two or more separate trusts;
$5 \\ 6$	5. THE PROPOSED RESIGNATION OF A TRUSTEE OR COTRUSTEE; OR
7 8	6. THE PROPOSED TRANSFER OF THE PRINCIPAL PLACE OF ADMINISTRATION OF A TRUST.
9 10 11	(II) NOTWITHSTANDING PARAGRAPHS (1) AND (2) OF THIS SUBSECTION, A TRUSTEE SHALL PROVIDE NOTICE TO A PERSON UNDER THIS TITLE:
12	1. BY PERSONAL SERVICE; OR
13 14	2. BY CERTIFIED MAIL, POSTAGE PREPAID, RETURN RECEIPT REQUESTED.
15 16 17 18	(B) NOTICE OTHERWISE REQUIRED UNDER THIS TITLE OR A DOCUMENT OTHERWISE REQUIRED TO BE SENT UNDER THIS TITLE NEED NOT BE PROVIDED TO A PERSON WHOSE IDENTITY OR LOCATION IS UNKNOWN TO AND NOT REASONABLY ASCERTAINABLE BY THE TRUSTEE.
19 20 21	(C) NOTICE UNDER THIS TITLE OR THE SENDING OF A DOCUMENT UNDER THIS TITLE MAY BE WAIVED IN WRITING BY THE PERSON TO BE NOTIFIED OR SENT THE DOCUMENT.
22 23	(D) NOTICE OF A JUDICIAL PROCEEDING UNDER THIS TITLE SHALL BE GIVEN AS PROVIDED IN THE APPLICABLE RULES OF CIVIL PROCEDURE.
24	14.5–110.
$25 \\ 26 \\ 27$	(A) WHENEVER NOTICE TO QUALIFIED BENEFICIARIES OF A TRUST IS REQUIRED UNDER THIS TITLE, THE TRUSTEE SHALL ALSO GIVE NOTICE TO ANY OTHER BENEFICIARY THAT HAS SENT THE TRUSTEE A REQUEST FOR NOTICE.
28 29 30 31 32	(B) A CHARITABLE ORGANIZATION EXPRESSLY DESIGNATED TO RECEIVE DISTRIBUTIONS UNDER THE TERMS OF A CHARITABLE TRUST HAS THE RIGHTS OF A QUALIFIED BENEFICIARY UNDER THIS TITLE IF THE CHARITABLE ORGANIZATION ON THE DATE THE QUALIFICATION OF THE CHARITABLE ORGANIZATION IS BEING DETERMINED:

1 (1) IS A DISTRIBUTEE OR PERMISSIBLE DISTRIBUTEE OF TRUST 2 INCOME OR PRINCIPAL;

3 (2) WOULD BE A DISTRIBUTEE OR PERMISSIBLE DISTRIBUTEE OF 4 TRUST INCOME OR PRINCIPAL ON THE TERMINATION OF THE INTERESTS OF 5 OTHER DISTRIBUTEES OR PERMISSIBLE DISTRIBUTEES THEN RECEIVING OR 6 ELIGIBLE TO RECEIVE DISTRIBUTIONS; OR

7 (3) WOULD BE A DISTRIBUTEE OR PERMISSIBLE DISTRIBUTEE OF 8 TRUST INCOME OR PRINCIPAL IF THE TRUST TERMINATED ON THAT DATE.

9 (C) A PERSON APPOINTED TO ENFORCE A TRUST CREATED FOR THE 10 CARE OF AN ANIMAL AS PROVIDED IN § 14.5–407 OF THIS TITLE OR ANOTHER 11 NONCHARITABLE PURPOSE AS PROVIDED IN § 14.5–408 OF THIS TITLE HAS THE 12 RIGHTS OF A QUALIFIED BENEFICIARY UNDER THIS TITLE.

13 (D) THE STATE'S ATTORNEY GENERAL HAS THE RIGHTS OF A 14 QUALIFIED BENEFICIARY WITH RESPECT TO A CHARITABLE TRUST HAVING THE 15 PRINCIPAL PLACE OF ADMINISTRATION OF THE CHARITABLE TRUST IN THIS 16 STATE.

17 **14.5–111. RESERVED.**

18 **14.5–112.**

(A) IN THE ABSENCE OF EXPRESS LANGUAGE TO THE CONTRARY, THE
RULES CONTAINED IN §§ 1–202, 1–203, 1–204, 1–205, 1–206, 1–207, 1–208,
1–209, AND 1–210.1 OF THIS ARTICLE SHALL BE APPLIED IN CONSTRUING THE
TERMS OF AN INTER VIVOS TRUST.

(B) WHENEVER A PROVISION IN §§ 1–202, 1–203, 1–204, 1–205, 1–206, 1–207, 1–208, 1–209, AND 1–210.1 OF THIS ARTICLE REFERS TO A "WILL", "ESTATE", OR A SIMILAR TERM RELEVANT PRIMARILY TO WILLS AND ESTATES OR A TAKER UNDER A WILL OR AN ESTATE, THE TERM SHALL BE MODIFIED TO MEAN "TRUST INSTRUMENT", "TRUST", OR A SIMILAR TERM TO REFLECT THE APPLICATION OF THE PRINCIPLES OF THOSE PROVISIONS TO AN INTER VIVOS TRUST.

30 SUBTITLE 2. JUDICIAL PROCEEDINGS.

31 **14.5–201.**

1	(A) THE ON THE INVOCATION OF THE COURT'S JURISDICTION BY AN
$\frac{1}{2}$	INTERESTED PERSON, ON THE COURT'S OWN MOTION, OR AS OTHERWISE
∠ 3	
4	ADMINISTRATION OF A TRUST, FASHIONING AND IMPLEMENTING REMEDIES AS
5	THE PUBLIC INTEREST AND THE INTERESTS OF THE BENEFICIARIES MAY
6	REQUIRE. TO THE EXTENT THE JURISDICTION OF THE COURT IS INVOKED BY AN
7	INTERESTED PERSON OR AS PROVIDED BY LAW.
8	(B) A TRUST IS NOT SUBJECT TO CONTINUING JUDICIAL SUPERVISION
9	UNLESS ORDERED BY THE COURT.
0	UNLESS ORDERED DI THE COURT.
10	(C) A JUDICIAL PROCEEDING INVOLVING A TRUST MAY RELATE TO A
11	MATTER INVOLVING THE ADMINISTRATION OF THE TRUST, INCLUDING A
12	REQUEST FOR INSTRUCTIONS AND AN ACTION TO DECLARE RIGHTS.
13	(D) (1) A COURT HAVING EQUITY JURISDICTION HAS GENERAL
14	SUPERINTENDING POWER WITH RESPECT TO TRUSTS.
15	(2) THE PROVISIONS OF TITLES 1 THROUGH 13 OF THIS ARTICLE
16	DO NOT AFFECT OR SUPERSEDE THE POWER DESCRIBED IN PARAGRAPH (1) OF
17	THIS SUBSECTION.
18	14.5–202.
19	(A) BY ACCEPTING THE TRUSTEESHIP OF A TRUST HAVING THE
20	PRINCIPAL PLACE OF ADMINISTRATION FOR THE TRUST IN THE STATE OR BY
21	MOVING THE PRINCIPAL PLACE OF ADMINISTRATION TO THE STATE, THE
22	TRUSTEE SUBMITS PERSONALLY TO THE JURISDICTION OF THE COURTS OF THE
23	STATE REGARDING A MATTER INVOLVING THE TRUST.
24	(B) (1) WITH RESPECT TO THE INTERESTS OF A BENEFICIARY OF A
25	TRUST HAVING THE PRINCIPAL PLACE OF ADMINISTRATION OF THE TRUST IN

TRUST HAVING THE PRINCIPAL PLACE OF ADMINISTRATION OF THE TRUST IN
THE STATE, THE BENEFICIARY IS SUBJECT TO THE JURISDICTION OF THE
COURTS OF THE STATE REGARDING A MATTER INVOLVING THE TRUST.

(2) BY ACCEPTING A DISTRIBUTION FROM A TRUST DESCRIBED IN
 PARAGRAPH (1) OF THIS SUBSECTION, THE RECIPIENT SUBMITS PERSONALLY
 TO THE JURISDICTION OF THE COURTS OF THE STATE REGARDING A MATTER
 INVOLVING THE TRUST.

32 (C) THIS SECTION DOES NOT PRECLUDE OTHER METHODS OF
 33 OBTAINING JURISDICTION OVER A TRUSTEE, A BENEFICIARY, OR ANY OTHER
 34 PERSON RECEIVING PROPERTY FROM THE TRUST.

1 **14.5–203.**

2 (A) (1) A DISCRETIONARY POWER CONFERRED ON THE TRUSTEE TO 3 DETERMINE THE BENEFITS OF A BENEFICIARY IS SUBJECT TO JUDICIAL 4 CONTROL ONLY TO PREVENT MISINTERPRETATION OR ABUSE OF THE 5 DISCRETION OF THE TRUSTEE.

6 (2) THE BENEFITS TO WHICH A BENEFICIARY OF A 7 DISCRETIONARY DISTRIBUTION PROVISION IS ENTITLED, AND WHAT MAY 8 CONSTITUTE AN ABUSE OF DISCRETION BY THE TRUSTEE, DEPEND ON THE 9 TERMS OF THE DISCRETION, INCLUDING THE PROPER CONSTRUCTION OF 10 ACCOMPANYING STANDARDS, AND ON THE SETTLOR'S PURPOSES IN GRANTING 11 THE DISCRETIONARY POWER AND IN CREATING THE TRUST.

12 (3) NOTWITHSTANDING THE BREADTH OF DISCRETION GRANTED 13 TO A TRUSTEE BY THE TERMS OF A TRUST, INCLUDING THE USE OF THE TERMS 14 "ABSOLUTE", "SOLE", OR "UNCONTROLLED", A TRUSTEE ABUSES THE 15 DISCRETION OF THE TRUSTEE IN EXERCISING OR FAILING TO EXERCISE A 16 DISCRETIONARY POWER IF THE TRUSTEE:

17

(I) ACTS DISHONESTLY;

18(II)ACTS WITH AN IMPROPER MOTIVE, EVEN THOUGH NOT19A DISHONEST MOTIVE;

20(III) FAILS TO EXERCISE THE JUDGMENT OF THE TRUSTEE21IN ACCORDANCE WITH THE TERMS AND PURPOSES OF THE TRUST; OR

22 (IV) ACTS BEYOND THE BOUNDS OF REASONABLE 23 JUDGMENT.

24(B) A COURT MAY REVIEW AN ACTION BY A TRUSTEE UNDER A SUPPORT25PROVISION OR A MANDATORY DISTRIBUTION PROVISION IN THE TRUST.

26

SUBTITLE 3. REPRESENTATION.

14.5–301.

(A) EXCEPT AS REQUIRED BY THE APPLICABLE RULES OF CIVIL
PROCEDURE IN A JUDICIAL PROCEEDING, NOTICE TO A PERSON THAT IS
AUTHORIZED TO REPRESENT AND BIND ANOTHER PERSON UNDER THIS
SUBTITLE HAS THE SAME EFFECT AS IF NOTICE WERE GIVEN DIRECTLY TO THE
OTHER PERSON UNLESS THE PERSON REPRESENTED OBJECTS TO THE

1REPRESENTATION BY NOTIFYING THE TRUSTEE AND THE REPRESENTATIVE2BEFORE THE NOTICE WOULD OTHERWISE HAVE BECOME EFFECTIVE.

(B) THE CONSENT OF A PERSON THAT IS AUTHORIZED TO REPRESENT
AND BIND ANOTHER PERSON UNDER THIS SUBTITLE IS BINDING ON THE PERSON
REPRESENTED UNLESS THE PERSON REPRESENTED OBJECTS TO THE
REPRESENTATION BY NOTIFYING THE TRUSTEE AND THE REPRESENTATIVE
BEFORE THE CONSENT WOULD OTHERWISE HAVE BECOME EFFECTIVE.

8 (C) EXCEPT AS OTHERWISE PROVIDED IN § 14.5–602 OF THIS TITLE, A 9 PERSON THAT UNDER THIS SUBTITLE IS AUTHORIZED TO REPRESENT A 10 SETTLOR THAT LACKS CAPACITY MAY RECEIVE NOTICE AND GIVE A BINDING 11 CONSENT ON BEHALF OF THE SETTLOR.

12 (D) A REPRESENTATIVE MAY ACT ON BEHALF OF THE INDIVIDUAL 13 REPRESENTED WITH RESPECT TO A MATTER ARISING UNDER THIS TITLE, 14 WHETHER OR NOT A JUDICIAL PROCEEDING CONCERNING THE TRUST IS 15 PENDING.

16 (E) IN MAKING DECISIONS AS A REPRESENTATIVE OF AN INDIVIDUAL, 17 THE REPRESENTATIVE MAY CONSIDER THE GENERAL BENEFIT ACCRUING TO 18 THE LIVING MEMBERS OF THE FAMILY OF THE INDIVIDUAL.

19 **14.5–302.**

20(A) THE HOLDER OF A QUALIFIED POWER OF APPOINTMENT MAY21REPRESENT AND BIND PERSONS WHOSE INTERESTS AS PERMISSIBLE22APPOINTEES OR TAKERS IN DEFAULT ARE SUBJECT TO THE POWER.

- 23 (B) A QUALIFIED POWER OF APPOINTMENT IS:
- 24

(1) A GENERAL POWER OF APPOINTMENT; OR

(2) A POWER OF APPOINTMENT EXERCISABLE IN FAVOR OF ALL
PERSONS OTHER THAN THE POWER HOLDER, THE ESTATE OF THE POWER
HOLDER, THE CREDITORS OF THE POWER HOLDER, AND THE CREDITORS OF THE
ESTATE OF THE POWER HOLDER.

29 **14.5–303.**

30TO THE EXTENT THERE IS NO CONFLICT OF INTEREST BETWEEN THE31REPRESENTATIVE AND THE PERSON REPRESENTED OR AMONG THOSE BEING32REPRESENTED WITH RESPECT TO A PARTICULAR QUESTION OR DISPUTE:

1 (1) A GUARDIAN OF THE PROPERTY MAY REPRESENT AND BIND 2 THE MINOR OR DISABLED PERSON;

3 (2) A GUARDIAN OF THE PERSON MAY REPRESENT AND BIND THE
 4 MINOR OR DISABLED PERSON IF A GUARDIAN OF THE PROPERTY HAS NOT BEEN
 5 APPOINTED;

6 (3) AN AGENT HAVING SPECIFIC AUTHORITY TO ACT WITH 7 RESPECT TO TRUST MATTERS MAY REPRESENT AND BIND THE PRINCIPAL;

8 (4) A TRUSTEE OF A TRUST THAT IS A BENEFICIARY OF ANOTHER 9 TRUST MAY REPRESENT AND BIND THE BENEFICIARIES OF THE TRUST THAT IS 10 THE BENEFICIARY OF THE OTHER TRUST;

11(5) A PERSONAL REPRESENTATIVE OF THE ESTATE OF A12DECEDENT THAT IS A BENEFICIARY OF A TRUST MAY REPRESENT AND BIND13INTERESTED PERSONS IN THE ESTATE; AND

14 **(6)** A PARENT MAY REPRESENT AND BIND THE MINOR, 15 INCAPACITATED, UNBORN, OR UNKNOWN CHILD OF THE PARENT OR CHILD OF 16 THE PARENT WHOSE LOCATION IS UNKNOWN AND NOT REASONABLY 17 ASCERTAINABLE IF A GUARDIAN OF THE PROPERTY OR GUARDIAN OF THE 18 PERSON FOR THE CHILD HAS NOT BEEN APPOINTED.

19 **14.5–304. RESERVED.**

20 **14.5–305.**

21(A) IF THE COURT DETERMINES THAT AN INTEREST IS NOT 22REPRESENTED UNDER THIS SUBTITLE OR THAT THE OTHERWISE AVAILABLE 23REPRESENTATION MIGHT BE INADEQUATE, THE COURT MAY APPOINT A 24REPRESENTATIVE TO RECEIVE NOTICE, GIVE CONSENT, AND OTHERWISE REPRESENT, BIND, AND ACT ON BEHALF OF A MINOR, AN INCAPACITATED 2526INDIVIDUAL, AN UNBORN INDIVIDUAL, OR A PERSON WHOSE IDENTITY OR 27LOCATION IS UNKNOWN OR IS NOT REASONABLY ASCERTAINABLE AS LONG AS 28THERE IS NO CONFLICT OF INTEREST BETWEEN THE REPRESENTATIVE AND THE 29PERSON REPRESENTED OR AMONG THOSE BEING REPRESENTED WITH RESPECT 30 TO A PARTICULAR QUESTION OR DISPUTE.

31(B) A REPRESENTATIVE MAY BE APPOINTED TO REPRESENT SEVERAL32PERSONS OR INTERESTS UNDER THIS TITLE.

33 SUBTITLE 4. CREATION, VALIDITY, MODIFICATION, AND TERMINATION OF
 34 TRUST.

38

1 **14.5–401.**

2	A TRUST MAY BE CREATED BY:				
$egin{array}{c} 3 \\ 4 \\ 5 \end{array}$	(1) TRANSFER OF PROPERTY TO ANOTHER PERSON AS TRUSTEE DURING THE LIFETIME OF THE SETTLOR OR BY WILL OR OTHER DISPOSITION TAKING EFFECT ON THE DEATH OF THE SETTLOR;				
6 7	(2) DECLARATION BY THE OWNER OF PROPERTY THAT THE OWNER HOLDS IDENTIFIABLE PROPERTY AS TRUSTEE; OR				
8 9	(3) EXERCISE OF A POWER OF APPOINTMENT IN FAVOR OF A TRUSTEE.				
10	14.5-402.				
11	(A) A TRUST IS CREATED ONLY IF:				
12	(1) THE SETTLOR HAS CAPACITY TO CREATE A TRUST;				
$\begin{array}{c} 13\\14\end{array}$	(2) THE SETTLOR INDICATES AN INTENTION TO CREATE THE TRUST;				
15	(3) THE TRUST HAS A DEFINITE BENEFICIARY OR IS:				
16	(I) A CHARITABLE TRUST;				
17 18	(II) A TRUST FOR THE CARE OF AN ANIMAL, AS PROVIDED IN § 14.5–407 OF THIS SUBTITLE; OR				
$\begin{array}{c} 19\\ 20 \end{array}$	(III) A TRUST FOR A NONCHARITABLE PURPOSE, AS PROVIDED IN § 14.5–408 OF THIS SUBTITLE; AND				
21	(4) THE TRUSTEE HAS DUTIES TO PERFORM.				
$22 \\ 23 \\ 24$	(B) A BENEFICIARY IS DEFINITE IF THE BENEFICIARY CAN BE ASCERTAINED NOW OR IN THE FUTURE, SUBJECT TO ANY APPLICABLE RULE AGAINST PERPETUITIES.				
25	(C) (1) A POWER IN A TRUSTEE OR IN ANOTHER PERSON UNDER THE				

25 (C) (1) A POWER IN A TRUSTEE OR IN ANOTHER PERSON UNDER THE
26 TERMS OF THE TRUST TO SELECT A BENEFICIARY FROM AN INDEFINITE CLASS
27 IS VALID.

1 (2) IF THE POWER DESCRIBED IN PARAGRAPH (1) OF THIS 2 SUBSECTION IS NOT EXERCISED WITHIN A REASONABLE TIME, THE POWER 3 FAILS AND THE PROPERTY SUBJECT TO THE POWER PASSES TO THE PERSONS 4 THAT WOULD HAVE TAKEN THE PROPERTY HAD THE POWER NOT BEEN 5 CONFERRED.

6 **14.5–403.**

7 A TRUST NOT CREATED BY WILL IS VALIDLY CREATED IF THE CREATION 8 OF THE TRUST COMPLIES WITH:

9 (1) THE LAW OF THE JURISDICTION IN WHICH THE TRUST 10 INSTRUMENT WAS EXECUTED; OR

11 (2) THE LAW OF THE JURISDICTION IN WHICH, AT THE TIME OF 12 CREATION:

13 (I) THE SETTLOR WAS DOMICILED OR WAS A NATIONAL;

14(II)A TRUSTEE OF THE TRUST WAS DOMICILED OR HAD A15PLACE OF BUSINESS; OR

16

- (III) ANY TRUST PROPERTY WAS LOCATED.
- 17 **14.5–404.**

18 (A) A TRUST MAY BE CREATED ONLY TO THE EXTENT THAT THE 19 PURPOSES OF THE TRUST ARE LAWFUL, NOT CONTRARY TO PUBLIC POLICY, AND 20 POSSIBLE TO ACHIEVE.

21 (B) A TRUST AND THE TERMS OF THE TRUST SHALL BE FOR THE 22 BENEFIT OF THE BENEFICIARIES OF THE TRUST.

23 **14.5–405.**

A TRUST IS VOID TO THE EXTENT THAT THE CREATION OF THE TRUST WAS
 INDUCED BY FRAUD, DURESS, OR UNDUE INFLUENCE.

26 **14.5–406.**

EXCEPT AS REQUIRED BY A PROVISION OTHER THAN THIS TITLE, A TRUST
NEED NOT BE EVIDENCED BY A TRUST INSTRUMENT, BUT THE CREATION OF AN
ORAL TRUST AND THE TERMS OF THE ORAL TRUST MAY BE ESTABLISHED ONLY
BY CLEAR AND CONVINCING EVIDENCE.

1 **14.5–407.**

2 (A) A TRUST MAY BE CREATED TO PROVIDE FOR THE CARE OF AN 3 ANIMAL ALIVE DURING THE LIFETIME OF THE SETTLOR.

4 (B) A TRUST AUTHORIZED BY THIS SECTION TERMINATES:

5 (1) IF CREATED TO PROVIDE FOR THE CARE OF ONE ANIMAL
6 ALIVE DURING THE LIFETIME OF THE SETTLOR, ON THE DEATH OF THE ANIMAL;
7 OR

8 (2) IF CREATED TO PROVIDE FOR THE CARE OF MORE THAN ONE 9 ANIMAL ALIVE DURING THE LIFETIME OF THE SETTLOR, ON THE DEATH OF THE 10 LAST SURVIVING ANIMAL.

11 (C) (1) A TRUST AUTHORIZED BY THIS SECTION MAY BE ENFORCED 12 BY A PERSON APPOINTED UNDER THE TERMS OF THE TRUST OR, IF NO PERSON 13 IS APPOINTED, BY A PERSON APPOINTED BY THE COURT.

(2) A PERSON HAVING AN INTEREST IN THE WELFARE OF AN
 ANIMAL, THE CARE FOR WHICH A TRUST HAS BEEN ESTABLISHED, MAY REQUEST
 THE COURT TO APPOINT A PERSON TO ENFORCE THE TRUST OR TO REMOVE A
 PERSON APPOINTED.

18 **(D) (1)** EXCEPT TO THE EXTENT THAT THE COURT MAY DETERMINE 19 THAT THE VALUE OF A TRUST AUTHORIZED BY THIS SECTION EXCEEDS THE 20 AMOUNT REQUIRED FOR THE USE INTENDED BY THE TRUST, THE PROPERTY OF 21 THE TRUST MAY BE APPLIED ONLY TO THE INTENDED USE OF THE TRUST.

(2) EXCEPT AS OTHERWISE PROVIDED UNDER THE TERMS OF THE
 TRUST, PROPERTY NOT REQUIRED FOR THE INTENDED USE OF THE TRUST
 SHALL BE DISTRIBUTED:

25

(I) TO THE SETTLOR, IF LIVING; OR

26 (II) IF THE SETTLOR IS DECEASED, TO THE SUCCESSORS IN 27 INTEREST OF THE SETTLOR.

28 **14.5–408**.

29 EXCEPT AS OTHERWISE PROVIDED IN § 14.5–407 OF THIS SUBTITLE OR BY 30 ANOTHER STATUTE, THE FOLLOWING RULES APPLY: 1 (1) (I) A TRUST MAY BE CREATED FOR A NONCHARITABLE 2 PURPOSE WITHOUT A DEFINITE OR DEFINITELY ASCERTAINABLE BENEFICIARY 3 OR FOR A NONCHARITABLE BUT OTHERWISE VALID PURPOSE TO BE SELECTED 4 BY THE TRUSTEE; AND

5 (II) A TRUST DESCRIBED IN ITEM (I) OF THIS ITEM MAY NOT 6 BE ENFORCED FOR MORE THAN 21 YEARS UNLESS THE SETTLOR ELECTS 7 OTHERWISE;

8 (2) A TRUST AUTHORIZED BY THIS SECTION MAY BE ENFORCED 9 BY A PERSON APPOINTED IN THE TERMS OF THE TRUST OR, IF NO PERSON IS SO 10 APPOINTED, BY A PERSON APPOINTED BY THE COURT; AND

11 **(3) (I)** PROPERTY OF A TRUST AUTHORIZED BY THIS SECTION 12 MAY BE APPLIED ONLY TO THE INTENDED USE OF THE TRUST, EXCEPT TO THE 13 EXTENT THAT THE COURT DETERMINES THAT THE VALUE OF THE TRUST 14 PROPERTY EXCEEDS THE AMOUNT REQUIRED FOR THE INTENDED USE; AND

(II) EXCEPT AS OTHERWISE PROVIDED IN THE TERMS OF A
TRUST DESCRIBED IN ITEM (I) OF THIS ITEM, PROPERTY NOT REQUIRED FOR
THE INTENDED USE SHALL BE DISTRIBUTED TO THE SETTLOR, IF THEN LIVING,
OR TO THE SUCCESSORS IN INTEREST OF THE SETTLOR, IF THE SETTLOR IS NOT
THEN LIVING.

20 **14.5–409.**

(A) IN ADDITION TO THE METHODS OF TERMINATION PRESCRIBED BY §§
 14.5-410 THROUGH 14.5-412 OF THIS SUBTITLE, A TRUST TERMINATES TO THE
 EXTENT:

24(1)THE TRUST IS REVOKED OR EXPIRES IN ACCORDANCE WITH25THE TERMS OF THE TRUST; OR

26 (2) THE PURPOSES OF THE TRUST HAVE BECOME UNLAWFUL, 27 <u>CONTRARY TO PUBLIC POLICY</u>, OR IMPOSSIBLE TO ACHIEVE.

(B) A PROCEEDING TO APPROVE OR DISAPPROVE A PROPOSED
MODIFICATION OR TERMINATION UNDER §§ 14.5-410 THROUGH 14.5-414 OF
THIS SUBTITLE, OR COMBINATION OR DIVISION OF A TRUST UNDER § 14.5-415
OF THIS SUBTITLE, MAY BE COMMENCED BY A TRUSTEE OR BENEFICIARY.

32 **14.5–410**.

1 (A) (1) A NONCHARITABLE IRREVOCABLE TRUST MAY BE 2 TERMINATED ON CONSENT OF <u>THE TRUSTEE AND</u> ALL BENEFICIARIES IF THE 3 COURT CONCLUDES THAT CONTINUANCE OF THE TRUST IS NOT NECESSARY TO 4 ACHIEVE ANY MATERIAL PURPOSE OF THE TRUST.

5 (2) A NONCHARITABLE IRREVOCABLE TRUST MAY BE MODIFIED 6 ON CONSENT OF <u>THE TRUSTEE AND</u> ALL BENEFICIARIES IF THE COURT 7 CONCLUDES THAT MODIFICATION IS NOT INCONSISTENT WITH A MATERIAL 8 PURPOSE OF THE TRUST.

9 (B) THE EXISTENCE OF A SPENDTHRIFT PROVISION OR SIMILAR 10 PROTECTIVE LANGUAGE IN THE TERMS OF THE TRUST DOES NOT PREVENT A 11 TERMINATION OF A TRUST UNDER SUBSECTION (A)(1) OF THIS SECTION.

12 (C) ON TERMINATION OF A TRUST UNDER SUBSECTION (A)(1) OF THIS 13 SECTION, THE TRUSTEE SHALL DISTRIBUTE THE TRUST PROPERTY AS AGREED 14 BY THE BENEFICIARIES.

15 (D) IF NOT ALL BENEFICIARIES CONSENT TO A PROPOSED 16 MODIFICATION OR TERMINATION OF THE TRUST UNDER SUBSECTION (A) OF 17 THIS SECTION, THE MODIFICATION OR TERMINATION MAY BE APPROVED BY THE 18 COURT IF THE COURT IS SATISFIED THAT:

19(1) IF ALL BENEFICIARIES HAD CONSENTED, THE TRUST COULD20HAVE BEEN MODIFIED OR TERMINATED UNDER THIS SECTION; AND

21 (2) THE INTERESTS OF A BENEFICIARY THAT DOES NOT CONSENT 22 WILL BE ADEQUATELY PROTECTED.

23 **14.5–411.**

(A) (1) THE COURT MAY MODIFY THE ADMINISTRATIVE OR
DISPOSITIVE TERMS OF A TRUST OR TERMINATE THE TRUST IF, BECAUSE OF
CIRCUMSTANCES NOT ANTICIPATED BY THE SETTLOR, MODIFICATION OR
TERMINATION WILL FURTHER THE PURPOSES OF THE TRUST.

28 (2) TO THE EXTENT PRACTICABLE, THE MODIFICATION 29 DESCRIBED IN PARAGRAPH (1) OF THIS SUBSECTION SHALL BE MADE IN 30 ACCORDANCE WITH THE PROBABLE INTENTION OF THE SETTLOR.

(B) THE COURT MAY MODIFY THE ADMINISTRATIVE TERMS OF A TRUST
 32 IF CONTINUATION OF THE TRUST ON ITS EXISTING TERMS WOULD BE
 33 IMPRACTICABLE OR WASTEFUL OR IMPAIR THE ADMINISTRATION OF THE
 34 TRUST.

1 (C) ON TERMINATION OF A TRUST UNDER SUBSECTION (A) OF THIS 2 SECTION, THE TRUSTEE SHALL DISTRIBUTE THE TRUST PROPERTY IN A 3 MANNER CONSISTENT WITH THE PURPOSES OF THE TRUST AS ORDERED BY THE 4 COURT.

5 **14.5–412.**

6 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE 7 MEANINGS INDICATED.

8 (2) "LIFE EXPECTANCY" MEANS THE LIFE EXPECTANCY 9 PUBLISHED FROM TIME TO TIME IN THE LIFE TABLES ISSUED BY THE U.S. 10 DEPARTMENT OF HEALTH AND HUMAN SERVICES.

11 (3) "NET ANNUAL INCOME" MEANS THE GROSS INCOME OF A 12 TRUST ESTATE DURING A FISCAL YEAR MINUS TRUST COMMISSIONS AND 13 EXPENSES ATTRIBUTABLE TO INCOME FOR THAT FISCAL YEAR.

14 (B) SUBJECT TO THE PROVISIONS OF THIS SECTION, A TRUSTEE MAY 15 TERMINATE A TRUST WITHOUT AN ORDER OF COURT IF THE FAIR MARKET 16 VALUE OF THE TRUST AS OF THE LAST ANNIVERSARY DATE OF THE TRUST IS 17 \$100,000 OR LESS.

18 (C) (1) (I) A TRUSTEE PROPOSING TO TERMINATE A TRUST UNDER 19 THIS SECTION SHALL SEND NOTICE OF THE PROPOSED TERMINATION TO EACH 20 COTRUSTEE AND EACH QUALIFIED BENEFICIARY OF THE TRUST AT THE LAST 21 KNOWN ADDRESS OF THE COTRUSTEE OR QUALIFIED BENEFICIARY.

22 (II) THE NOTICE DESCRIBED IN SUBPARAGRAPH (I) OF THIS 23 PARAGRAPH SHALL BE:

24

1. **PERSONALLY DELIVERED; OR**

25 **2.** MAILED BY CERTIFIED MAIL, POSTAGE PREPAID, 26 RETURN RECEIPT REQUESTED.

27 (2) THE NOTICE REQUIRED UNDER PARAGRAPH (1) OF THIS 28 SUBSECTION SHALL CONTAIN:

- 29
- (I) THE NAME OF THE TRUST;

30 (II) THE NAME OF THE PERSON WHO CREATED THE TRUST;

	44 SENATE BILL 240
1	(III) THE DATE ON WHICH THE TRUST WAS ESTABLISHED;
$2 \\ 3$	(IV) THE NAME AND ADDRESS OF THE TRUSTEE SEEKING TO TERMINATE THE TRUST;
4	(V) THE NAME OF ANY COTRUSTEE;
5 6 7 8	(VI) A STATEMENT THAT THE EFFECTIVE DATE OF THE TERMINATION SHALL BE AT LEAST 90 DAYS AFTER THE DATE ON WHICH NOTICE UNDER PARAGRAPH (1) OF THIS SUBSECTION HAS BEEN RECEIVED BY EACH COTRUSTEE AND EACH QUALIFIED BENEFICIARY;
9 10	(VII) A STATEMENT OF THE REASONS FOR TERMINATION OF THE TRUST;
11 12	(VIII) THE APPROXIMATE AMOUNT AND THE MANNER OF CALCULATION OF EACH DISTRIBUTION OF THE TRUST ESTATE; AND
13 14	(IX) A STATEMENT OF THE RIGHT TO OBJECT AND THE PROCEDURES TO FOLLOW UNDER SUBSECTION (D) OF THIS SECTION.
$\begin{array}{c} 15\\ 16\\ 17\end{array}$	(D) (1) A PERSON ENTITLED TO NOTICE UNDER SUBSECTION (C) OF THIS SECTION THAT OBJECTS TO THE TERMINATION OF A TRUST SHALL SEND WRITTEN OBJECTION TO THE TERMINATION.
18 19 20 21 22 23 24	(2) THE WRITTEN OBJECTION DESCRIBED IN PARAGRAPH (1) OF THIS SUBSECTION SHALL BE PERSONALLY DELIVERED OR MAILED BY CERTIFIED MAIL, POSTAGE PREPAID, RETURN RECEIPT REQUESTED, WITHIN 60 DAYS AFTER THE DATE ON WHICH NOTICE THAT IS SENT UNDER SUBSECTION (C)(1) OF THIS SECTION IS RECEIVED BY THE OBJECTING PARTY, TO THE TRUSTEE PROPOSING TO TERMINATE THE TRUST AT THE ADDRESS IN THE NOTICE.
25 26 27 28 29	(E) (1) IF NO QUALIFIED BENEFICIARY OR COTRUSTEE DELIVERS A TIMELY OBJECTION IN ACCORDANCE WITH THE PROVISIONS OF SUBSECTION (D) OF THIS SECTION, THE TRUST SHALL BE TERMINATED AND THE TRUST ESTATE SHALL BE DISTRIBUTED IN ACCORDANCE WITH THE PROVISIONS OF SUBSECTION (F) OF THIS SECTION.
30 31 32 33 34	(2) IF A QUALIFIED BENEFICIARY OR COTRUSTEE DELIVERS A TIMELY WRITTEN OBJECTION IN ACCORDANCE WITH THE PROVISIONS OF SUBSECTION (D) OF THIS SECTION, THE TRUST MAY NOT BE TERMINATED UNLESS THE OBJECTION IS WITHDRAWN IN WRITING BY THE OBJECTING PARTY WITHIN 90 DAYS AFTER RECEIPT OF THE NOTICE BY THE OBJECTING PARTY.

1 (F) (1) A TRUST ESTATE THAT IS TERMINATED UNDER THIS SECTION 2 SHALL BE DISTRIBUTED IN ANY MANNER UNANIMOUSLY AGREED ON BY ALL 3 QUALIFIED BENEFICIARIES.

4 (2) (I) IF THE QUALIFIED BENEFICIARIES DO NOT 5 UNANIMOUSLY AGREE TO A MANNER OF DISTRIBUTION, THE DISTRIBUTION 6 SHALL BE MADE IN ACCORDANCE WITH THE PROVISIONS OF THIS PARAGRAPH.

 $\overline{7}$ A QUALIFIED BENEFICIARY THAT HAS A PRESENT **(II)** 8 INTEREST IN THE TRUST ESTATE SHALL RECEIVE AN AMOUNT EQUAL TO THE 9 PRESENT VALUE OF AN ANNUITY EQUAL TO THE PROPORTIONATE SHARE OF 10 THE QUALIFIED BENEFICIARY OF THE AVERAGE NET ANNUAL INCOME OF THE 11 TRUST AS OF THE LAST THREE ANNIVERSARY DATES OF THE TRUST FOR A TERM 12EQUAL TO THE LIFE EXPECTANCY OF THE QUALIFIED BENEFICIARY, AT THE 13INTEREST RATE FOR VALUING VESTED BENEFITS PROVIDED BY THE PENSION 14BENEFIT GUARANTY CORPORATION FOR THE MONTH IMMEDIATELY 15PRECEDING THE DATE ON WHICH THE NOTICE UNDER SUBSECTION (C)(1) OF 16 THIS SECTION IS SENT.

17 (III) THE AMOUNT OF THE TRUST ESTATE REMAINING AFTER 18 DISTRIBUTION TO QUALIFIED BENEFICIARIES HAVING A PRESENT INTEREST IN 19 THE TRUST ESTATE SHALL BE DISTRIBUTED TO QUALIFIED BENEFICIARIES 20 HAVING A FUTURE INTEREST IN THE TRUST ESTATE IN WHATEVER 21 PROPORTIONS ARE PROVIDED FOR UNDER THE TERMS OF THE GOVERNING 22 INSTRUMENT UNDER WHICH THE TRUST WAS CREATED.

(G) THE EXISTENCE OF SPENDTHRIFT OR SIMILAR PROTECTIVE
 LANGUAGE IN THE GOVERNING INSTRUMENT UNDER WHICH THE TRUST WAS
 CREATED MAY NOT PREVENT TERMINATION UNDER THIS SECTION.

(H) ALL EXPENSES INCURRED BY THE TRUSTEE INCIDENT TO THE
 TERMINATION OF A TRUST UNDER THIS SECTION SHALL BE PAID BY THE TRUST
 ESTATE.

(I) A DISTRIBUTION TO A MINOR QUALIFIED BENEFICIARY SHALL BE
 MADE TO THE CUSTODIAN OF THE MINOR UNDER THE MARYLAND UNIFORM
 TRANSFERS TO MINORS ACT.

(J) THIS SECTION MAY NOT BE CONSTRUED TO LIMIT THE RIGHT OF A
 TRUSTEE TO TERMINATE A TRUST IN ACCORDANCE WITH APPLICABLE
 PROVISIONS OF THE GOVERNING INSTRUMENT UNDER WHICH THE TRUST WAS
 CREATED.

	46 SENATE BILL 240
1	(K) A TRUST MAY BE TERMINATED UNDER THIS SECTION IF:
$2 \\ 3$	(1) THE TRUSTEE HAS DETERMINED THAT TERMINATION OF THE TRUST IS IN THE BEST INTERESTS OF THE QUALIFIED BENEFICIARIES; AND
4 5 6	(2) THE GOVERNING INSTRUMENT DOES NOT EXPRESSLY PROHIBIT TERMINATION OF THE TRUST REGARDLESS OF THE SIZE OF THE TRUST.
7	(L) A TRUST MAY NOT BE TERMINATED UNDER THIS SECTION IF:
8	(1) THE PROVISIONS OF THE GOVERNING INSTRUMENT MAKE
9	THE TRUST ELIGIBLE TO QUALIFY FOR THE MARITAL DEDUCTION FOR UNITED
10	STATES ESTATE TAX OR FOR UNITED STATES GIFT TAX PURPOSES UNDER THE
11	INTERNAL REVENUE CODE OF 1986, AS AMENDED, UNLESS ALL QUALIFIED
12	BENEFICIARIES AGREE THAT ALL OF THE TRUST ESTATE SHALL BE
13	DISTRIBUTED TO THE SPOUSE OF THE CREATOR OF THE TRUST; OR
14	(2) THE PROVISIONS OF THE GOVERNING INSTRUMENT MAKE
15	THE TRUST QUALIFY, IN WHOLE OR IN PART, FOR A CHARITABLE DEDUCTION
16	FOR UNITED STATES ESTATE TAX, UNITED STATES GIFT TAX, OR UNITED
17	STATES INCOME TAX PURPOSES UNDER THE INTERNAL REVENUE CODE OF
18	1986, AS AMENDED, UNLESS ALL QUALIFIED BENEFICIARIES AGREE THAT ALL
19	OF THE TRUST ESTATE SHALL BE DISTRIBUTED TO ONE OR MORE QUALIFIED
20	BENEFICIARIES THAT QUALIFY FOR THE CHARITABLE DEDUCTION UNDER THE
21	INTERNAL REVENUE CODE OF 1986, AS AMENDED.

22 **14.5–413.**

23THE COURT MAY REFORM THE TERMS OF A TRUST, EVEN IF24UNAMBIGUOUS, TO CONFORM THE TERMS TO THE INTENTION OF THE SETTLOR25IF IT IS PROVED BY CLEAR AND CONVINCING EVIDENCE THAT BOTH THE INTENT26OF THE SETTLOR AND THE TERMS OF THE TRUST WERE AFFECTED BY A27MISTAKE OF FACT OR LAW, WHETHER IN EXPRESSION OR INDUCEMENT.

14.5–414.

(A) TO ACHIEVE THE TAX OBJECTIVES OF THE SETTLOR, THE COURT
 MAY MODIFY THE TERMS OF A TRUST IN A MANNER THAT IS NOT CONTRARY TO
 THE PROBABLE INTENTION OF THE SETTLOR.

32 (B) THE COURT MAY PROVIDE THAT THE MODIFICATION DESCRIBED IN 33 SUBSECTION (A) OF THIS SECTION HAS RETROACTIVE EFFECT. 1 **14.5–415.**

2 (A) (1) SUBJECT TO THE PROVISIONS OF PARAGRAPH (2) OF THIS SUBSECTION, ON PETITION BY A TRUSTEE, PERSONAL REPRESENTATIVE, 3 BENEFICIARY, OR PARTY IN INTEREST, AFTER NOTICE AS THE COURT MAY 4 DIRECT TO THE TRUSTEES, PERSONAL REPRESENTATIVES, BENEFICIARIES, AND $\mathbf{5}$ 6 PARTIES IN INTEREST, AND FOR GOOD CAUSE SHOWN, A COURT MAY: 7 DIVIDE A TRUST INTO TWO OR MORE SEPARATE **(I)** 8 TRUSTS; OR 9 **(II)** CONSOLIDATE TWO OR MORE TRUSTS INTO A SINGLE 10 TRUST. 11 (2) A COURT MAY DIVIDE A TRUST OR CONSOLIDATE TRUSTS: 12 **(I) ON TERMS AND CONDITIONS AS THE COURT CONSIDERS** 13 **APPROPRIATE; AND** 14 **(II)** IF THE COURT IS SATISFIED THAT A DIVISION OF A 15TRUST OR CONSOLIDATION OF TRUSTS WILL NOT DEFEAT OR MATERIALLY 16 **IMPAIR:** 171. THE ACCOMPLISHMENT OF TRUST PURPOSES; OR 2. 18 THE INTERESTS OF THE BENEFICIARIES. 19 A COURT MAY PASS ORDERS THAT THE COURT CONSIDERS (3) 20**PROPER OR NECESSARY TO PROTECT THE INTERESTS OF:** 21**(I)** A TRUSTEE; 22(II) A PERSONAL REPRESENTATIVE; 23(III) A BENEFICIARY; OR 24(IV) A PARTY IN INTEREST. 25**(B)** THIS SECTION MAY NOT BE CONSTRUED TO LIMIT THE RIGHT OF A 26TRUSTEE OR PERSONAL REPRESENTATIVE TO DIVIDE A TRUST OR 27CONSOLIDATE TRUSTS, WITHOUT AN ORDER OF A COURT, IN ACCORDANCE WITH 28THE APPLICABLE PROVISIONS OF THE GOVERNING INSTRUMENT.

SUBTITLE 5. CREDITOR'S CLAIMS; SPENDTHRIFT AND DISCRETIONARY TRUSTS.

3 **14.5–501.**

4 (A) A COURT MAY AUTHORIZE A CREDITOR OR AN ASSIGNEE OF A 5 BENEFICIARY TO REACH THE INTEREST OF THE BENEFICIARY BY ATTACHMENT 6 OF PRESENT OR FUTURE DISTRIBUTIONS TO OR FOR THE BENEFIT OF THE 7 BENEFICIARY OR BY OTHER MEANS IF THAT INTEREST IS NOT SUBJECT TO A 8 DISCRETIONARY DISTRIBUTION PROVISION, A SUPPORT PROVISION, OR A 9 SPENDTHRIFT PROVISION.

10 (B) THE COURT MAY LIMIT THE AMOUNT, TIMING, OR OTHER TERMS 11 AND CONDITIONS OF AN AWARD UNDER THIS SECTION TO RELIEF AS IS 12 APPROPRIATE UNDER THE CIRCUMSTANCES CONSIDERING, AMONG OTHER 13 FACTORS:

14 (1) THE SUPPORT NEEDS OF THE BENEFICIARY, THE SPOUSE OF 15 THE BENEFICIARY, THE FORMER SPOUSE OF THE BENEFICIARY, AND THE 16 DEPENDENT CHILDREN OF THE BENEFICIARY;

17 (2) WITH RESPECT TO A BENEFICIARY THAT IS THE RECIPIENT OF 18 PUBLIC BENEFITS, THE SUPPLEMENTAL NEEDS OF THE BENEFICIARY IF THE 19 TRUST WAS NOT INTENDED TO PROVIDE FOR THE BASIC SUPPORT OF THE 20 BENEFICIARY; AND

(3) THE AMOUNT OF THE CLAIM OF THE CREDITOR OR ASSIGNEE
 AND THE LIKELY PROCEEDS THAT A SALE WOULD PRODUCE AS COMPARED TO
 THE POTENTIAL VALUE OF THE INTEREST TO THE BENEFICIARY.

24 **14.5–502.**

25 (A) (1) A BENEFICIARY OF A DISCRETIONARY DISTRIBUTION
26 PROVISION HAS NO PROPERTY RIGHT IN A TRUST INTEREST THAT IS SUBJECT
27 TO A DISCRETIONARY DISTRIBUTION PROVISION.

28 (2) A BENEFICIAL INTEREST THAT IS SUBJECT TO A 29 DISCRETIONARY DISTRIBUTION PROVISION MAY NOT BE JUDICIALLY 30 FORECLOSED, ATTACHED BY A CREDITOR, OR TRANSFERRED BY THE 31 BENEFICIARY.

32(B)(1)THE CREDITOR OF THE BENEFICIARY OF A DISCRETIONARY33DISTRIBUTION PROVISION CREATED BY SOMEONE OTHER THAN THAT34BENEFICIARY HAS NO ENFORCEABLE RIGHT TO TRUST INCOME OR PRINCIPAL

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1 THAT MAY BE DISTRIBUTED ONLY IN THE EXERCISE OF THE DISCRETION OF THE 2 TRUSTEE.

3 (2) TRUST PROPERTY THAT IS SUBJECT TO A DISCRETIONARY
4 DISTRIBUTION PROVISION IS NOT SUBJECT TO THE ENFORCEMENT OF A
5 JUDGMENT UNTIL INCOME OR PRINCIPAL OR BOTH IS DISTRIBUTED DIRECTLY
6 TO THE BENEFICIARY.

7 (C) A CREDITOR OF A BENEFICIARY MAY NOT COMPEL A DISTRIBUTION
8 THAT IS SUBJECT TO A DISCRETIONARY DISTRIBUTION PROVISION CREATED BY
9 SOMEONE OTHER THAN THAT BENEFICIARY.

10(D) A TRUST MAY CONTAIN A DISCRETIONARY DISTRIBUTION11PROVISION WITH RESPECT TO ONE OR MORE BUT LESS THAN ALL12BENEFICIARIES.

(E) IF A BENEFICIARY OF A DISCRETIONARY DISTRIBUTION PROVISION
 HAS A POWER OF WITHDRAWAL CREATED BY SOMEONE OTHER THAN THAT
 BENEFICIARY:

16 (1) DURING THE PERIOD THE POWER MAY BE EXERCISED, THE 17 PORTION OF THE TRUST THE BENEFICIARY MAY WITHDRAW MAY NOT BE 18 DEEMED TO BE SUBJECT TO THE DISCRETIONARY DISTRIBUTION PROVISION 19 WITH RESPECT TO THAT BENEFICIARY;

20 (2) DURING THE PERIOD THE POWER MAY BE EXERCISED, THE 21 PORTION OF THE TRUST THE BENEFICIARY MAY NOT WITHDRAW SHALL BE 22 DEEMED TO BE SUBJECT TO THE DISCRETIONARY DISTRIBUTION PROVISION 23 WITH RESPECT TO THAT BENEFICIARY; AND

(3) DURING PERIODS IN WHICH THE BENEFICIARY DOES NOT
HAVE A POWER OF WITHDRAWAL, THE TRUST INTEREST OF THE BENEFICIARY
SHALL BE DEEMED TO BE SUBJECT TO THE DISCRETIONARY DISTRIBUTION
PROVISION WITH RESPECT TO THAT BENEFICIARY.

28**(F)** IF A BENEFICIARY AND ONE OR MORE OTHERS HAVE MADE 29CONTRIBUTIONS TO A TRUST SUBJECT TO A DISCRETIONARY DISTRIBUTION 30 PROVISION. THE PORTION OF THE TRUST ATTRIBUTABLE TO THE 31 CONTRIBUTIONS OF THE BENEFICIARY MAY NOT BE DEEMED TO BE SUBJECT TO 32 THAT DISCRETIONARY DISTRIBUTION PROVISION WITH RESPECT TO THAT 33 BENEFICIARY, BUT THE PORTION OF THE TRUST ATTRIBUTABLE TO THE 34CONTRIBUTIONS OF OTHERS SHALL BE DEEMED TO BE SUBJECT TO THE 35DISCRETIONARY DISTRIBUTION PROVISION WITH RESPECT TO THAT 36 **BENEFICIARY.**

1 (G) THE INTEREST OF A BENEFICIARY WHO IS BLIND OR DISABLED AS 2 DEFINED IN 42 U.S.C. § 1382C(A)(3) MAY BE SUBJECT TO A DISCRETIONARY 3 DISTRIBUTION PROVISION NOTWITHSTANDING:

4 (1) PRECATORY LANGUAGE IN THE TRUST INSTRUMENT 5 REGARDING THE INTENDED PURPOSE OF THE TRUST OF PROVIDING 6 SUPPLEMENTAL GOODS AND SERVICES TO OR FOR THE BENEFIT OF THE 7 BENEFICIARY, AND NOT TO SUPPLANT BENEFITS FROM PUBLIC ASSISTANCE 8 PROGRAMS; OR

9 (2) A PROHIBITION AGAINST PROVIDING FOOD, CLOTHING, AND 10 SHELTER TO THE BENEFICIARY.

11 **14.5–503.**

12 (A) EXCEPT AS PROVIDED IN §§ 14.5–505 AND 14.5–506(B) OF THIS 13 SUBTITLE:

14 (1) A BENEFICIAL INTEREST THAT IS SUBJECT TO A SUPPORT
 15 PROVISION MAY NOT BE JUDICIALLY FORECLOSED, ATTACHED BY A CREDITOR,
 16 OR TRANSFERRED BY THE BENEFICIARY; AND

17 (2) TRUST PROPERTY THAT IS SUBJECT TO A SUPPORT 18 PROVISION IS NOT SUBJECT TO THE ENFORCEMENT OF A JUDGMENT UNTIL 19 INCOME OR PRINCIPAL OR BOTH IS DISTRIBUTED DIRECTLY TO THE 20 BENEFICIARY.

(B) (1) THE USE, OCCUPANCY, AND ENJOYMENT OF A SINGLE PARCEL
OF RESIDENTIAL REAL PROPERTY, AS DESIGNATED BY THE TRUSTEE, AND
TANGIBLE PERSONAL PROPERTY BY A BENEFICIARY WHOSE INTEREST IS
SUBJECT TO A SUPPORT PROVISION MAY NOT BE TRANSFERRED BY THE
BENEFICIARY OF THE USE, OCCUPANCY, OR ENJOYMENT.

26 (2) THE USE, OCCUPANCY, AND ENJOYMENT DESCRIBED IN
27 PARAGRAPH (1) OF THIS SUBSECTION ARE NOT SUBJECT TO THE ENFORCEMENT
28 OF A JUDGMENT AGAINST THE BENEFICIARY.

29 **14.5–504.**

30 (A) A SPENDTHRIFT PROVISION IS VALID AND ENFORCEABLE.

31 (B) A PROVISION OF A TRUST PROVIDING THAT THE INTEREST OF A 32 BENEFICIARY IS HELD SUBJECT TO A "SPENDTHRIFT TRUST", OR WORDS OF SIMILAR IMPORT, RESTRAINS BOTH VOLUNTARY AND INVOLUNTARY TRANSFER
 OF THE BENEFICIARY'S INTEREST.

3 (C) A BENEFICIAL INTEREST THAT IS SUBJECT TO A SPENDTHRIFT 4 PROVISION MAY NOT BE JUDICIALLY FORECLOSED OR ATTACHED BY A 5 CREDITOR.

6 (D) (1) A BENEFICIARY MAY NOT TRANSFER AN INTEREST IN A TRUST 7 IN VIOLATION OF A VALID SPENDTHRIFT PROVISION AND, EXCEPT AS 8 OTHERWISE PROVIDED IN THIS SUBTITLE, A CREDITOR OR AN ASSIGNEE OF THE 9 BENEFICIARY MAY NOT REACH THE INTEREST OR A DISTRIBUTION BY THE 10 TRUSTEE BEFORE THE RECEIPT BY THE BENEFICIARY OF THE INTEREST OR 11 DISTRIBUTION.

12 (2) AN ATTEMPT BY A BENEFICIARY TO TRANSFER AN INTEREST
 13 IN A TRUST IN VIOLATION OF A VALID SPENDTHRIFT PROVISION SHALL BE VOID
 14 AND OF NO EFFECT.

15 (E) (1) THE USE, OCCUPANCY, AND ENJOYMENT OF A SINGLE PARCEL 16 OF RESIDENTIAL REAL PROPERTY, AS DESIGNATED BY THE TRUSTEE, AND 17 TANGIBLE PERSONAL PROPERTY BY A BENEFICIARY WHOSE INTEREST IS 18 SUBJECT TO A SPENDTHRIFT PROVISION MAY NOT BE TRANSFERRED.

19(2) THE USE, OCCUPANCY, AND ENJOYMENT DESCRIBED IN20PARAGRAPH (1) OF THIS SUBSECTION ARE NOT SUBJECT TO THE ENFORCEMENT21OF A JUDGMENT AGAINST THE BENEFICIARY.

22 **14.5–505.**

(A) IN THIS SECTION, "CHILD" INCLUDES ANY PERSON FOR WHOM AN
ORDER OR A JUDGMENT FOR CHILD SUPPORT HAS BEEN ENTERED IN THIS
STATE OR ANOTHER STATE.

26 (B) SUBJECT TO THE PROVISIONS OF § 14.5–502 OF THIS SUBTITLE, 27 THE INTEREST OF A BENEFICIARY THAT IS SUBJECT TO EITHER A SPENDTHRIFT 28 PROVISION OR A SUPPORT PROVISION OR BOTH CAN BE REACHED IN 29 SATISFACTION OF AN ENFORCEABLE CLAIM AGAINST THE BENEFICIARY BY THE 30 FOLLOWING:

(1) A CHILD, SPOUSE, OR FORMER SPOUSE OF THE BENEFICIARY
 THAT HAS A JUDGMENT OR COURT ORDER AGAINST THE BENEFICIARY FOR
 SUPPORT OR MAINTENANCE;

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A JUDGMENT CREDITOR THAT HAS PROVIDED SERVICES FOR 1 (2) $\mathbf{2}$ THE PROTECTION OF THE INTEREST OF A BENEFICIARY IN THE TRUST; OR 3 A CLAIM OF THIS STATE OR THE UNITED STATES TO THE (3) 4 EXTENT A STATUTE OF THIS STATE OR FEDERAL LAW SO PROVIDES; OR $\mathbf{5}$ (4) A VICTIM OF AN INTENTIONAL TORT OF THE BENEFICIARY 6 WHO HAS A JUDGMENT OR COURT ORDER AGAINST THE BENEFICIARY FOR 7 DAMAGES. 8 (C) (1) A CLAIMANT DESCRIBED IN SUBSECTION (B) OF THIS SECTION MAY OBTAIN FROM A COURT AN ORDER ATTACHING PRESENT OR FUTURE 9 10 DISTRIBUTIONS TO OR FOR THE BENEFIT OF THE BENEFICIARY. 11 THE COURT MAY ONLY ORDER THE TRUSTEE TO SATISFY ALL (2) 12OR PART OF THE JUDGMENT OUT OF PAYMENTS OF INCOME OR PRINCIPAL AS 13THEY BECOME DUE. 14 (3) THE COURT MAY LIMIT THE AWARD TO SUCH RELIEF AS IS APPROPRIATE UNDER THE CIRCUMSTANCES, CONSIDERING IN FASHIONING AN 15AWARD OF RELIEF AS IS APPROPRIATE UNDER THE CIRCUMSTANCES, THE 16 17COURT MAY CONSIDER, AMONG ANY OTHER FACTORS DETERMINED **APPROPRIATE BY THE COURT:** 18 19**(I)** THE SUPPORT NEEDS OF THE BENEFICIARY'S SPOUSE, 20FORMER SPOUSE, AND DEPENDENT CHILDREN; 21**(II)** THE SUPPORT NEEDS OF THE BENEFICIARY; OR 22(III) WITH RESPECT TO A BENEFICIARY THAT IS THE RECIPIENT OF PUBLIC BENEFITS, THE SUPPLEMENTAL NEEDS OF THE 23BENEFICIARY IF THE TRUST WAS NOT INTENDED TO PROVIDE FOR THE BASIC 2425SUPPORT OF THE BENEFICIARY. 26(III) THE DAMAGES OF A VICTIM OF AN INTENTIONAL TORT 27OF A BENEFICIARY; OR 28(IV) WITH RESPECT TO A BENEFICIARY WHO IS THE 29**RECIPIENT OF PUBLIC BENEFITS, A PETITION FILED IN ACCORDANCE WITH** 30 **SUBSECTION (D) OF THIS SECTION.** 31(1) (I) NOTWITHSTANDING ANY CONTRARY PROVISION OF THE (D) 32TRUST INSTRUMENT, IF A STATUTE OR REGULATION OF THE STATE OR THE 33 UNITED STATES REQUIRES A BENEFICIARY TO REIMBURSE THE STATE OR ANY

1	AGENCY OR INSTRUMENTALITY OF THE STATE FOR PUBLIC ASSISTANCE,					
2	INCLUDING MEDICAL ASSISTANCE, FURNISHED OR TO BE FURNISHED TO THE					
3	BENEFICIARY, THE ATTORNEY GENERAL OR AN ATTORNEY ACTING ON BEHALF					
4	OF THE AGENCY RESPONSIBLE FOR THE PROGRAM MAY FILE A PETITION IN THE					
5	CIRCUIT COURT HAVING JURISDICTION OVER THE TRUST TO REQUEST					
6	REIMBURSEMENT.					
7	<u>(II) A PETITION UNDER SUBPARAGRAPH (I) OF THIS</u>					
8	PARAGRAPH MAY BE FILED BEFORE OBTAINING A JUDGMENT.					
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9	(III) THE BENEFICIARY AND THE GUARDIAN OF THE					
10	BENEFICIARY'S PROPERTY SHALL BE A PARTY TO A PROCEEDING UNDER THIS					
11	PARAGRAPH.					
12	(2) FOLLOWING ITS REVIEW OF A PETITION FILED UNDER					
13	PARAGRAPH (1) OF THIS SUBSECTION, THE COURT MAY:					
	,					
14	(I) ORDER THE TRUSTEE TO SATISFY ALL OR PART OF THE					
15	LIABILITY THROUGH ALL OR PART OF THE AMOUNTS TO WHICH THE					
16	BENEFICIARY IS ENTITLED, WHETHER PRESENTLY OR IN THE FUTURE, TO THE					
17	EXTENT THE BENEFICIARY HAS THE RIGHT UNDER THE TRUST TO COMPEL THE					
18	TRUSTEE TO PAY INCOME OR PRINCIPAL TO OR FOR THE BENEFIT OF THE					
19	BENEFICIARY; OR					
~ ~						
20	(II) <u>REGARDLESS OF WHETHER THE BENEFICIARY HAS THE</u>					
21	RIGHT TO COMPEL THE TRUSTEE TO PAY INCOME OR PRINCIPAL TO OR FOR THE					
22 00	BENEFIT OF THE BENEFICIARY, ORDER THE TRUSTEE TO SATISFY ALL OR PART					
$\frac{23}{24}$	OF THE LIABILITY THROUGH ALL OR PART OF ANY FUTURE PAYMENT THAT THE TRUSTEE ELECTS TO MAKE TO OR FOR THE BENEFIT OF THE BENEFICIARY IN					
$\frac{24}{25}$	THE EXERCISE OF DISCRETION UNDER THE TRUST.					
20	THE EXERCISE OF DISCRETION UNDER THE TRUST.					
26	14.5–506.					
27	(A) TO THE EXTENT THAT THE INTEREST OF A BENEFICIARY SUBJECT					

(A) TO THE EXTENT THAT THE INTEREST OF A BENEFICIARY SUBJECT
TO A MANDATORY DISTRIBUTION PROVISION, OTHER THAN A SUPPORT
PROVISION, DOES NOT CONTAIN A SPENDTHRIFT PROVISION, THE COURT MAY
AUTHORIZE A CREDITOR OR AN ASSIGNEE OF THE BENEFICIARY TO ATTACH
PRESENT OR FUTURE MANDATORY DISTRIBUTIONS TO OR FOR THE BENEFIT OF
THE BENEFICIARY, OR TO REACH THE BENEFICIARY'S INTEREST BY OTHER
MEANS, AS PROVIDED IN § 14.5–501 OF THIS SUBTITLE.

(B) A CREDITOR OR AN ASSIGNEE OF A BENEFICIARY MAY REACH A
 MANDATORY DISTRIBUTION OF A TRUST IF THE TRUSTEE HAS NOT MADE THE
 DISTRIBUTION TO THE BENEFICIARY WITHIN A REASONABLE TIME AFTER THE

DESIGNATED DISTRIBUTION DATE, WHETHER OR NOT THE TRUST CONTAINS A SPENDTHRIFT PROVISION OR A SUPPORT PROVISION.		
14.5-507.		
(A) (1) A POWER OF APPOINTMENT HELD BY A PERSON OTHER THAN THE SETTLOR OF THE TRUST IS NOT A PROPERTY INTEREST.		
(2) A POWER OF APPOINTMENT DESCRIBED IN PARAGRAPH (1) OF THIS SUBSECTION AND PROPERTY SUBJECT TO THAT POWER OF APPOINTMENT MAY NOT BE JUDICIALLY FORECLOSED OR ATTACHED BY A CREDITOR OF THE HOLDER OF THE POWER.		
(B) NONE OF THE FOLLOWING SHALL BE SUFFICIENT TO CREATE A GENERAL POWER OF APPOINTMENT OR A POWER OF WITHDRAWAL WITH RESPECT TO A BENEFICIARY OR SETTLOR:		
(1) THE BENEFICIARY SERVING AS A TRUSTEE OR COTRUSTEE;		
(2) THE SETTLOR OR THE BENEFICIARY HOLDING AN UNRESTRICTED POWER TO REMOVE OR REPLACE A TRUSTEE;		
(3) THE SETTLOR OR THE BENEFICIARY OF A TRUST SERVING AS A TRUST ADMINISTRATOR, A PARTNER OF A PARTNERSHIP, A MANAGER OF A LIMITED LIABILITY COMPANY, OR AN OFFICER OF A CORPORATION, OR SERVING IN ANOTHER MANAGERIAL FUNCTION OF ANOTHER TYPE OF ENTITY IF PART OR ALL OF THE TRUST PROPERTY CONSISTS OF AN INTEREST IN THE ENTITY;		
(4) A PERSON RELATED BY BLOOD OR ADOPTION TO THE SETTLOR OR THE BENEFICIARY SERVING AS TRUSTEE OF THE TRUST;		
(5) THE AGENT, ACCOUNTANT, ATTORNEY, FINANCIAL ADVISER, OR FRIEND OF THE SETTLOR OR BENEFICIARY SERVING AS TRUSTEE OF THE		

- 25TRUST;
- 26(6) A BUSINESS ASSOCIATE OF THE SETTLOR OR THE 27**BENEFICIARY SERVING AS TRUSTEE OF THE TRUST;**

28A POWER OF APPOINTMENT HELD BY THE SETTLOR OTHER (7) 29THAN THE RESERVED POWER OF THE SETTLOR TO WITHDRAW TRUST PROPERTY 30 FOR THE BENEFIT OF THE SETTLOR, THE CREDITORS OF THE SETTLOR, THE 31 ESTATE OF THE SETTLOR, OR THE CREDITORS OF THE ESTATE OF THE SETTLOR;

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1(8) A POWER TO SUBSTITUTE PROPERTY OF EQUIVALENT VALUE2FOR TRUST PROPERTY AS DEFINED IN § 675(4)(C) OF THE INTERNAL REVENUE3CODE OF 1986, AS AMENDED; OR

4 (9) A POWER TO BORROW TRUST PROPERTY FOR LESS THAN 5 ADEQUATE INTEREST OR WITHOUT SECURITY AS DEFINED IN § 675(2) OF THE 6 INTERNAL REVENUE CODE OF 1986, AS AMENDED.

7 **14.5–508.**

8 (A) THE FOLLOWING RULES APPLY, WHETHER OR NOT THE TERMS OF A 9 TRUST CONTAIN A SPENDTHRIFT PROVISION:

10 (1) DURING THE LIFETIME OF THE SETTLOR, THE PROPERTY OF A 11 REVOCABLE TRUST IS SUBJECT TO CLAIMS OF THE CREDITORS OF THE 12 SETTLOR;

13(2)WITH RESPECT TO AN IRREVOCABLE TRUST, A CREDITOR OR14AN ASSIGNEE OF THE SETTLOR MAY REACH ONLY THE LESSER OF:

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(I) THE CLAIM OF THE CREDITOR OR ASSIGNEE; AND

16 (II) THE MAXIMUM AMOUNT THAT CAN BE DISTRIBUTED TO 17 OR FOR THE BENEFIT OF THE SETTLOR;

18 **(3)** IF A TRUST HAS MORE THAN ONE SETTLOR, THE AMOUNT THE 19 CREDITOR OR ASSIGNEE OF A PARTICULAR SETTLOR MAY REACH MAY NOT 20 EXCEED THE INTEREST OF THE SETTLOR IN THE PORTION OF THE TRUST 21 ATTRIBUTABLE TO THE CONTRIBUTION OF THAT SETTLOR;

22(4) WITH RESPECT TO A TRUST DESCRIBED IN 42 U.S.C. § 1396P(D)(4)(A) OR (C), THE COURT MAY LIMIT THE AWARD OF THE CREDITOR 2324OF A SETTLOR UNDER ITEMS (1) AND (2) OF THIS SUBSECTION TO THE RELIEF 25THAT IS APPROPRIATE UNDER THE CIRCUMSTANCES, CONSIDERING AMONG 26OTHER FACTORS DETERMINED APPROPRIATE BY THE COURT, THE 27SUPPLEMENTAL NEEDS OF THE BENEFICIARY; AND

28 **(5)** (1) EXCEPT AS PROVIDED IN THIS ITEM, AFTER AFTER THE 29 DEATH OF A SETTLOR, AND SUBJECT TO THE RIGHT OF THE SETTLOR TO DIRECT 30 THE SOURCE FROM WHICH LIABILITIES WILL BE PAID, THE PROPERTY OF A 31 TRUST THAT WAS REVOCABLE AT THE DEATH OF THE SETTLOR IS SUBJECT TO 32 CLAIMS OF THE CREDITORS OF THE SETTLOR.

1	(II) I F A CLAIM IS OR WOULD BE BARRED AGAINST THE					
2	PROBATE ESTATE OF THE SETTLOR UNDER § 8-103 OF THIS ARTICLE, THAT					
3	CLAIM IS BARRED AGAINST THE TRUSTEE AND THE PROPERTY OF THE					
4	REVOCABLE TRUST.					
5	(b) An individual who creates a trust may not be considered a					
6	SETTLOR WITH REGARD TO THE RETAINED BENEFICIAL INTEREST OF THE					
$\overline{7}$	INDIVIDUAL IN THE TRUST IF:					
8	(1) THE INDIVIDUAL CREATES, OR HAS CREATED, THE TRUST FOR					
9	THE BENEFIT OF THE SPOUSE OF THE INDIVIDUAL;					
10	(2) The trust is treated as qualified terminable					
11	interest property under § 2523(f) of the Internal Revenue Code of					
12	1986, AS AMENDED; AND					
13	(3) The retained beneficial interest of the individual in					
14	THE TRUST INCOME, TRUST PRINCIPAL, OR BOTH, FOLLOWS THE TERMINATION					
15	OF THE PRIOR BENEFICIAL INTEREST OF THE SPOUSE OF THE INDIVIDUAL IN					
16	THE TRUST.					
17	(C) (B) (1) DURING THE PERIOD THE POWER OF WITHDRAWAL MAY					
18	BE EXERCISED, THE HOLDER OF A POWER OF WITHDRAWAL SHALL BE TREATED					
19	IN THE SAME MANNER AS THE SETTLOR OF A REVOCABLE TRUST TO THE					
20	EXTENT OF THE PROPERTY SUBJECT TO THAT POWER.					

21 (2) AFTER THE LAPSE, WAIVER, OR RELEASE OF A POWER OF 22 WITHDRAWAL, THE FORMER POWER HOLDER SHALL NO LONGER BE 23 CONSIDERED A SETTLOR OF THE TRUST.

24 **14.5–509.**

TRUST PROPERTY IS NOT SUBJECT TO PERSONAL OBLIGATIONS OF THE TRUSTEE OF THE TRUST, EVEN IF THE TRUSTEE BECOMES INSOLVENT OR BANKRUPT.

14.5–510.

(A) A CREDITOR MAY NOT ATTACH, EXERCISE, REACH, OR OTHERWISE
COMPEL DISTRIBUTION OF THE BENEFICIAL INTEREST OF A BENEFICIARY THAT
IS A TRUSTEE OR THE SOLE TRUSTEE OF THE TRUST, BUT THAT IS NOT A
SETTLOR OF THE TRUST, EXCEPT TO THE EXTENT THAT THE INTEREST WOULD
BE SUBJECT TO THE CLAIM OF THE CREDITOR WERE THE BENEFICIARY NOT
ACTING AS COTRUSTEE OR SOLE TRUSTEE OF THE TRUST.

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1 **(B)** A CREDITOR MAY NOT ATTACH, EXERCISE, REACH, OR OTHERWISE 2 COMPEL DISTRIBUTION OF THE BENEFICIAL INTEREST OF A BENEFICIARY OR 3 ANY OTHER PERSON THAT HOLDS AN UNCONDITIONAL OR CONDITIONAL POWER 4 TO REMOVE A TRUSTEE, TO REPLACE A TRUSTEE, OR TO REMOVE AND REPLACE A TRUSTEE, EXCEPT TO THE EXTENT THAT THE INTEREST WOULD BE SUBJECT $\mathbf{5}$ 6 TO THE CLAIM OF THE CREDITOR IF THE BENEFICIARY OR OTHER PERSON DID 7 NOT HAVE THE POWER TO REMOVE, REPLACE, OR REMOVE AND REPLACE A 8 TRUSTEE.

9 **14.5–511.**

10 (A) IN THIS SECTION, "PROCEEDS" MEANS:

(1) PROPERTY ACQUIRED BY THE TRUSTEE ON THE SALE, LEASE,
 LICENSE, EXCHANGE, OR OTHER DISPOSITION OF PROPERTY ORIGINALLY
 CONVEYED BY A HUSBAND AND WIFE TO A TRUSTEE OR TRUSTEES;

14(2) PROPERTY COLLECTED BY THE TRUSTEE ON, OR15DISTRIBUTED ON ACCOUNT OF, PROPERTY ORIGINALLY CONVEYED BY A16HUSBAND AND WIFE TO A TRUSTEE OR TRUSTEES;

17(3)RIGHTS ARISING OUT OF PROPERTY ORIGINALLY CONVEYED18BY A HUSBAND AND WIFE TO A TRUSTEE;

(4) CLAIMS ARISING OUT OF THE LOSS, NONCONFORMITY, OR
 INTERFERENCE WITH THE USE OF, DEFECTS OR INFRINGEMENT OF RIGHTS IN,
 OR DAMAGE TO PROPERTY ORIGINALLY CONVEYED BY A HUSBAND AND WIFE TO
 A TRUSTEE;

(5) INSURANCE PAYABLE BY REASON OF THE LOSS OR
NONCONFORMITY OF, DEFECTS OR INFRINGEMENT OF RIGHTS IN, OR DAMAGE
TO PROPERTY ORIGINALLY CONVEYED BY A HUSBAND AND WIFE TO A TRUSTEE;
OR

(6) PROPERTY HELD BY THE TRUSTEE THAT IS OTHERWISE
TRACEABLE TO PROPERTY ORIGINALLY CONVEYED BY A HUSBAND AND WIFE TO
A TRUSTEE OR THE PROPERTY PROCEEDS DESCRIBED IN ITEMS (1) THROUGH
(5) OF THIS SUBSECTION.

(B) PROPERTY OF A HUSBAND AND WIFE THAT WAS HELD BY THEM AS
 TENANTS BY THE ENTIRETY AND SUBSEQUENTLY CONVEYED TO THE TRUSTEE
 OR TRUSTEES OF ONE OR MORE TRUSTS, AND THE PROCEEDS OF THAT
 PROPERTY, SHALL HAVE THE SAME IMMUNITY FROM THE CLAIMS OF THE

SEPARATE CREDITORS OF THE HUSBAND AND WIFE AS WOULD EXIST IF THE
 HUSBAND AND WIFE HAD CONTINUED TO HOLD THE PROPERTY OR THE
 PROCEEDS FROM THE PROPERTY AS TENANTS BY THE ENTIRETY, AS LONG AS:

4

(1) THE HUSBAND AND WIFE REMAIN MARRIED;

5 (2) THE PROPERTY OR THE PROCEEDS FROM THE PROPERTY 6 CONTINUE TO BE HELD IN TRUST BY THE TRUSTEE OR TRUSTEES OR THE 7 SUCCESSORS IN TRUST OF THE TRUSTEE OR TRUSTEES;

8 (3) BOTH THE HUSBAND AND WIFE ARE BENEFICIARIES OF THE 9 TRUST OR TRUSTS; AND

10 (4) THE TRUST INSTRUMENT, DEED, OR OTHER INSTRUMENT OF
 11 CONVEYANCE PROVIDES THAT THIS SECTION SHALL APPLY TO THE PROPERTY
 12 OR THE PROCEEDS FROM THE PROPERTY.

13 **(C)** (1) AFTER THE DEATH OF THE FIRST OF THE HUSBAND OR WIFE 14 TO DIE, ALL PROPERTY HELD IN TRUST THAT WAS IMMUNE FROM THE CLAIMS OF THEIR SEPARATE CREDITORS UNDER SUBSECTION (B) OF THIS SECTION 1516 IMMEDIATELY PRIOR TO THE DEATH OF THE INDIVIDUAL SHALL CONTINUE TO 17HAVE THE SAME IMMUNITY FROM THE CLAIMS OF THE SEPARATE CREDITORS 18 OF THE DECEDENT AS WOULD HAVE EXISTED IF THE HUSBAND AND WIFE HAD 19 CONTINUED TO HOLD THE PROPERTY CONVEYED IN TRUST, OR THE PROCEEDS 20FROM THE PROPERTY, AS TENANTS BY THE ENTIRETY.

21 (2) To the extent that the surviving spouse remains a
 22 BENEFICIARY OF THE TRUST, THE PROPERTY THAT WAS IMMUNE FROM THE
 23 CLAIMS OF THE SEPARATE CREDITORS OF THE DECEDENT UNDER PARAGRAPH
 24 (1) OF THIS SUBSECTION SHALL BE SUBJECT TO THE CLAIMS OF THE SEPARATE
 25 CREDITORS OF THE SURVIVING SPOUSE.

(D) THE IMMUNITY FROM THE CLAIMS OF SEPARATE CREDITORS
UNDER SUBSECTIONS (B) AND (C) OF THIS SECTION MAY BE WAIVED, AS TO
EACH SPECIFIC CREDITOR OR ALL SEPARATE CREDITORS OF A HUSBAND AND
WIFE OR SPECIFICALLY DESCRIBED TRUST PROPERTY, OR ALL FORMER
TENANCY BY THE ENTIRETY PROPERTY CONVEYED TO THE TRUSTEE OR
TRUSTEES, BY:

- 32
- (1) THE EXPRESS PROVISIONS OF A TRUST INSTRUMENT; OR

33(2)THE WRITTEN CONSENT OF BOTH THE HUSBAND AND THE34WIFE.

1	(E) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS				
$2 \\ 3$	SUBSECTION, IMMUNITY FROM THE CLAIMS OF SEPARATE CREDITORS UNDER SUBSECTIONS (B) AND (C) OF THIS SECTION SHALL BE WAIVED IF A TRUSTEE				
4	EXECUTES AND DELIVERS A FINANCIAL STATEMENT FOR THE TRUST THAT FAILS				
5	TO DISCLOSE THE REQUESTED IDENTITY OF PROPERTY HELD IN TRUST THAT IS				
6	IMMUNE FROM THE CLAIMS OF SEPARATE CREDITORS.				
7	(2) IMMUNITY IS NOT WAIVED UNDER THIS SUBSECTION IF THE				
8 9	IDENTITY OF THE PROPERTY THAT IS IMMUNE FROM THE CLAIMS OF SEPARATE CREDITORS IS OTHERWISE REASONABLY DISCLOSED BY:				
9	CREDITORS IS OTHERWISE REASONABLT DISCLOSED BT.				
10	(I) A PUBLICLY RECORDED DEED OR OTHER INSTRUMENT				
11	OF CONVEYANCE BY THE HUSBAND AND WIFE TO THE TRUSTEE;				
12	(II) A WRITTEN MEMORANDUM BY THE HUSBAND AND WIFE,				
13	OR BY A TRUSTEE, THAT IS RECORDED AMONG THE LAND RECORDS OR OTHER				
14	PUBLIC RECORDS IN THE COUNTY OR OTHER JURISDICTION WHERE THE				
15	RECORDS OF THE TRUST ARE REGULARLY MAINTAINED; OR				
16	(III) THE TERMS OF THE TRUST INSTRUMENT, INCLUDING A				
17	SCHEDULE OR EXHIBIT ATTACHED TO THE TRUST INSTRUMENT, IF A COPY OF				
18	THE TRUST INSTRUMENT IS PROVIDED WITH THE FINANCIAL STATEMENT.				
19	(3) A WAIVER UNDER THIS SUBSECTION SHALL BE EFFECTIVE				
20	ONLY AS TO:				
21	(I) THE PERSON TO WHOM THE FINANCIAL STATEMENT IS				
$\frac{21}{22}$	DELIVERED BY THE TRUSTEE;				
23	(II) THE PARTICULAR TRUST PROPERTY HELD IN TRUST				
$\begin{array}{c} 24 \\ 25 \end{array}$	FOR WHICH THE IMMUNITY FROM THE CLAIMS OF SEPARATE CREDITORS IS INSUFFICIENTLY DISCLOSED ON THE FINANCIAL STATEMENT; AND				
20					
26	(III) THE TRANSACTION FOR WHICH THE DISCLOSURE WAS				
27	SOUGHT.				
28	(F) IN A DISPUTE RELATING TO THE IMMUNITY OF TRUST PROPERTY				
29	FROM THE CLAIMS OF A SEPARATE CREDITOR OF A HUSBAND OR WIFE, THE				
30	TRUSTEE HAS THE BURDEN OF PROVING THE IMMUNITY OF THE TRUST				
31	PROPERTY FROM THE CLAIMS OF THE CREDITOR.				
32	(G) AFTER A CONVEYANCE TO A TRUSTEE DESCRIBED IN SUBSECTION				
33	(B) OF THIS SECTION, THE PROPERTY TRANSFERRED SHALL NO LONGER BE				
34	HELD BY THE HUSBAND AND WIFE AS TENANTS BY THE ENTIRETY.				

(H) THIS SECTION MAY NOT BE CONSTRUED TO AFFECT EXISTING THIS SECTION APPLIES ONLY TO TENANCY BY THE ENTIRETY **(I)** SUBTITLE 6. REVOCABLE TRUSTS. 14.5-601. THE CAPACITY REQUIRED TO CREATE, AMEND, REVOKE, OR ADD (A) PROPERTY TO A REVOCABLE TRUST, OR TO DIRECT THE ACTIONS OF THE TRUSTEE OF A REVOCABLE TRUST, IS THE SAME AS THAT REQUIRED TO MAKE A WILL. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO PROHIBIT **(B)** THE CREATION OF A REVOCABLE TRUST IF THAT CREATION IS OTHERWISE AUTHORIZED UNDER STATE LAW. (C) THE FACT THAT THE SETTLOR BECOMES INCAPACITATED DOES NOT CONVERT A REVOCABLE TRUST INTO AN IRREVOCABLE TRUST. 14.5-602. (1) UNLESS THE TERMS OF A TRUST EXPRESSLY PROVIDE THAT (A) THE TRUST IS IRREVOCABLE, THE SETTLOR MAY REVOKE OR AMEND THE TRUST. THIS SUBSECTION DOES NOT APPLY TO A TRUST CREATED (2) UNDER AN INSTRUMENT EXECUTED BEFORE OCTOBER 1, 2014 JANUARY 1, 2015. IF A REVOCABLE TRUST IS CREATED OR FUNDED BY MORE THAN **(B) ONE SETTLOR:** TO THE EXTENT THE TRUST CONSISTS OF COMMUNITY (1) PROPERTY, THE TRUST MAY BE REVOKED BY EITHER SPOUSE ACTING ALONE BUT MAY BE AMENDED ONLY BY JOINT ACTION OF BOTH SPOUSES;

29(2) TO THE EXTENT THE TRUST CONSISTS OF PROPERTY OTHER 30 THAN COMMUNITY PROPERTY, EACH SETTLOR MAY REVOKE OR AMEND THE

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1 2 STATE LAW WITH RESPECT TO A TENANCY BY THE ENTIRETY.

3 4 PROPERTY CONVEYED TO A TRUSTEE OR TRUSTEES ON OR AFTER OCTOBER 1, 2010. 5

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TRUST WITH REGARD TO THE PORTION OF THE TRUST PROPERTY 1 $\mathbf{2}$ ATTRIBUTABLE TO THE CONTRIBUTION OF THAT SETTLOR; AND 3 (3) ON THE REVOCATION OR AMENDMENT OF THE TRUST BY 4 FEWER THAN ALL OF THE SETTLORS, THE TRUSTEE SHALL PROMPTLY NOTIFY THE OTHER SETTLORS OF THE REVOCATION OR AMENDMENT. $\mathbf{5}$ 6 **(C)** THE SETTLOR MAY REVOKE OR AMEND A REVOCABLE TRUST: 7 (1) BY SUBSTANTIALLY COMPLYING WITH A METHOD TO REVOKE 8 OR AMEND THE TRUST PROVIDED IN THE TERMS OF THE TRUST; OR 9 (2) IF THE TERMS OF THE TRUST DO NOT PROVIDE A METHOD TO REVOKE OR AMEND THE TRUST OR THE METHOD PROVIDED IN THE TERMS OF 10 11 THE TRUST IS NOT EXPRESSLY MADE EXCLUSIVE, BY: 12**(I)** A LATER WILL OR CODICIL THAT EXPRESSLY REFERS TO 13 THE TRUST OR SPECIFICALLY DEVISES PROPERTY THAT WOULD HAVE PASSED 14 OTHERWISE ACCORDING TO THE TERMS OF THE TRUST; OR 15**(II)** ANOTHER METHOD MANIFESTING CLEAR AND CONVINCING EVIDENCE OF THE INTENT OF THE SETTLOR. 16 (D) 17ON REVOCATION OF A REVOCABLE TRUST, THE TRUSTEE SHALL 18 DELIVER THE TRUST PROPERTY AS THE SETTLOR DIRECTS. 19 THE POWERS OF A SETTLOR WITH RESPECT TO REVOCATION, **(E)** 20AMENDMENT, OR DISTRIBUTION OF TRUST PROPERTY MAY BE EXERCISED BY AN 21AGENT UNDER A POWER OF ATTORNEY ONLY TO THE EXTENT EXPRESSLY 22AUTHORIZED BY THE TERMS OF THE TRUST AND THE POWER OF ATTORNEY. 23A GUARDIAN OF THE PROPERTY OF THE SETTLOR OR, IF NO **(F)** 24GUARDIAN OF THE PROPERTY HAS BEEN APPOINTED, A GUARDIAN OF THE 25PERSON OF THE SETTLOR MAY EXERCISE THE POWERS OF THE SETTLOR WITH RESPECT TO REVOCATION, AMENDMENT, OR DISTRIBUTION OF TRUST 2627PROPERTY ONLY WITH THE APPROVAL OF THE COURT SUPERVISING THE 28GUARDIANSHIP AND ONLY IF THE TRUST INSTRUMENT DOES NOT PROVIDE 29**OTHERWISE.** 30 14.5-603.

31(A)EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, WHILE32A TRUST IS REVOCABLE, RIGHTS OF THE BENEFICIARIES ARE SUBJECT TO THE

1 CONTROL OF THE SETTLOR AND THE DUTIES OF THE TRUSTEE ARE OWED 2 EXCLUSIVELY TO THE SETTLOR.

3 (B) WHILE A TRUST IS REVOCABLE AND A SETTLOR DOES NOT HAVE 4 THE CAPACITY TO REVOKE THE TRUST, A BENEFICIARY TO WHICH 5 DISTRIBUTIONS MAY BE MADE DURING THE LIFETIME OF THE SETTLOR SHALL 6 HAVE THE RIGHT TO ENFORCE THE TRUST AS IF THE TRUST WERE 7 IRREVOCABLE.

8 14.5-604.

9 A PERSON SHALL COMMENCE A JUDICIAL PROCEEDING TO CONTEST THE
 10 VALIDITY OF A TRUST THAT WAS REVOCABLE AT THE DEATH OF THE SETTLOR
 11 WITHIN 6 MONTHS AFTER THE TRUSTEE SENT THE PERSON A COPY OF THE
 12 TRUST INSTRUMENT AND A NOTICE INFORMING THE PERSON OF THE EXISTENCE
 13 OF THE TRUST, OF THE NAME AND ADDRESS OF THE TRUSTEE, AND OF THE TIME
 14 ALLOWED FOR COMMENCING A PROCEEDING.

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SUBTITLE 7. OFFICE OF TRUSTEE.

16 **14.5–701.**

17 (A) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (C) OF THIS 18 SECTION, A PERSON DESIGNATED AS TRUSTEE ACCEPTS THE TRUSTEESHIP:

19(1) BY SUBSTANTIALLY COMPLYING WITH A METHOD OF20ACCEPTANCE PROVIDED IN THE TERMS OF THE TRUST; OR

(2) IF THE TERMS OF THE TRUST DO NOT PROVIDE A METHOD OF
 ACCEPTANCE OF THE TRUSTEESHIP OR THE METHOD PROVIDED IN THE TERMS
 IS NOT EXPRESSLY MADE EXCLUSIVE, BY ACCEPTING DELIVERY OF THE TRUST
 PROPERTY, EXERCISING POWERS OR PERFORMING DUTIES AS TRUSTEE, OR
 OTHERWISE INDICATING ACCEPTANCE OF THE TRUSTEESHIP.

26 (B) (1) A PERSON DESIGNATED AS TRUSTEE THAT HAS NOT YET 27 ACCEPTED THE TRUSTEESHIP MAY REJECT THE TRUSTEESHIP.

28 (2) A DESIGNATED TRUSTEE THAT DOES NOT ACCEPT THE 29 TRUSTEESHIP WITHIN A REASONABLE TIME AFTER KNOWING OF THE 30 DESIGNATION IS DEEMED TO HAVE REJECTED THE TRUSTEESHIP.

31 (C) A PERSON DESIGNATED AS TRUSTEE, WITHOUT ACCEPTING THE 32 TRUSTEESHIP, MAY:

1 (1) ACT TO PRESERVE THE TRUST PROPERTY IF, WITHIN A 2 REASONABLE TIME AFTER ACTING, THE PERSON SENDS A REJECTION OF THE 3 TRUSTEESHIP TO THE SETTLOR OR, IF THE SETTLOR IS DECEASED OR LACKS 4 CAPACITY, TO A QUALIFIED BENEFICIARY; AND

5 (2) INSPECT OR INVESTIGATE TRUST PROPERTY TO DETERMINE 6 POTENTIAL LIABILITY UNDER ENVIRONMENTAL OR OTHER LAW OR FOR ANY 7 OTHER PURPOSE.

8 **14.5–702**.

9 (A) A TRUSTEE SHALL GIVE BOND TO SECURE PERFORMANCE OF THE 10 DUTIES OF THE TRUSTEE ONLY IF THE COURT:

11(1)FINDS THAT A BOND IS NEEDED TO PROTECT THE INTERESTS12OF THE BENEFICIARIES OR IS REQUIRED BY THE TERMS OF THE TRUST; AND

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(2) HAS NOT DISPENSED WITH THE REQUIREMENT.

14 **(B) (1)** THE COURT MAY SPECIFY THE AMOUNT OF A BOND, THE 15 LIABILITIES OF THE BOND, AND WHETHER SURETIES FOR THE BOND ARE 16 NECESSARY.

17(2) THE COURT MAY MODIFY OR TERMINATE A BOND AT ANY18TIME.

19 **14.5–703.**

20 (A) IF A VACANCY OCCURS IN A COTRUSTEESHIP, THE REMAINING 21 COTRUSTEES MAY ACT FOR THE TRUST.

(B) A COTRUSTEE SHALL PARTICIPATE IN THE PERFORMANCE OF THE
FUNCTION OF A TRUSTEE UNLESS THE COTRUSTEE IS UNAVAILABLE TO
PERFORM THE FUNCTION BECAUSE OF ABSENCE, ILLNESS, DISQUALIFICATION
UNDER OTHER LAW, OR OTHER TEMPORARY INCAPACITY OR THE COTRUSTEE
HAS PROPERLY DELEGATED THE PERFORMANCE OF THE FUNCTION TO
ANOTHER TRUSTEE.

(C) IF A COTRUSTEE IS UNAVAILABLE TO PERFORM DUTIES BECAUSE
OF ABSENCE, ILLNESS, DISQUALIFICATION UNDER OTHER LAW, OR OTHER
TEMPORARY INCAPACITY, AND PROMPT ACTION IS NECESSARY TO ACHIEVE THE
PURPOSES OF THE TRUST OR TO AVOID INJURY TO THE TRUST PROPERTY, THE
REMAINING COTRUSTEE OR COTRUSTEES MAY ACT FOR THE TRUST.

1 **(**D**)** (1) A TRUSTEE MAY DELEGATE INVESTMENT AND MANAGEMENT $\mathbf{2}$ FUNCTIONS TO A COTRUSTEE AS PRUDENT UNDER THE CIRCUMSTANCES. 3 (2) **UNLESS A DELEGATION OF AN INVESTMENT OR MANAGEMENT** 4 FUNCTION WAS IRREVOCABLE, A TRUSTEE MAY REVOKE A DELEGATION $\mathbf{5}$ PREVIOUSLY MADE. 6 14.5-704. 7 (A) A VACANCY IN A TRUSTEESHIP OCCURS IF: 8 (1) A PERSON DESIGNATED AS TRUSTEE REJECTS THE 9 **TRUSTEESHIP:** 10 (2) A PERSON DESIGNATED AS TRUSTEE CANNOT BE IDENTIFIED OR DOES NOT EXIST; 11 12(3) **A TRUSTEE RESIGNS:** (4) 13A TRUSTEE IS DISQUALIFIED OR REMOVED; 14(5) **A TRUSTEE DIES;** 15(6) A GUARDIAN OF THE PERSON OR GUARDIAN OF THE PROPERTY IS APPOINTED FOR AN INDIVIDUAL SERVING AS TRUSTEE; 16 A TRUSTEE CANNOT BE LOCATED FOR 120 CONSECUTIVE 17(7) 18 DAYS; OR 19 (8) A TRUSTEE IS UNABLE TO HANDLE BUSINESS AFFAIRS AS 20DETERMINED BY TWO LICENSED PHYSICIANS. 21(1) IF ONE OR MORE COTRUSTEES REMAIN IN OFFICE, A VACANCY **(B)** 22IN A TRUSTEESHIP NEED NOT BE FILLED. 23(2) A VACANCY IN A TRUSTEESHIP SHALL BE FILLED IF THE 24TRUST HAS NO REMAINING TRUSTEE. 25A VACANCY IN A TRUSTEESHIP THAT IS REQUIRED TO BE FILLED **(C)** 26SHALL BE FILLED IN THE FOLLOWING ORDER OF PRIORITY BY A PERSON: DESIGNATED IN ACCORDANCE WITH THE TERMS OF THE 27(1) 28TRUST TO ACT AS SUCCESSOR TRUSTEE;

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1 (2) APPOINTED BY UNANIMOUS AGREEMENT OF THE QUALIFIED 2 BENEFICIARIES; OR

3

(3) **APPOINTED BY THE COURT.**

4 **(D)** THE COURT MAY APPOINT AN ADDITIONAL TRUSTEE OR SPECIAL 5 FIDUCIARY WHENEVER THE COURT CONSIDERS THE APPOINTMENT NECESSARY 6 FOR THE ADMINISTRATION OF THE TRUST, WHETHER OR NOT A VACANCY IN A 7 TRUSTEESHIP EXISTS OR IS REQUIRED TO BE FILLED.

8 **14.5–705.**

9 (A) A TRUSTEE MAY RESIGN WITH THE APPROVAL OF THE COURT.

10 (B) IN APPROVING A RESIGNATION OF A TRUSTEE, THE COURT MAY 11 ISSUE ORDERS AND IMPOSE CONDITIONS REASONABLY NECESSARY FOR THE 12 PROTECTION OF THE TRUST PROPERTY.

13 (C) LIABILITY OF A RESIGNING TRUSTEE OR OF A SURETY ON THE BOND 14 OF THE TRUSTEE FOR ACTS OR OMISSIONS OF THE TRUSTEE IS NOT 15 DISCHARGED OR AFFECTED BY THE RESIGNATION OF THE TRUSTEE.

16 **14.5–706.**

17 IN ADDITION TO THE GROUNDS AND PROCEDURES FOR REMOVAL OF A 18 FIDUCIARY SET FORTH IN § 15–112 OF THIS ARTICLE:

19 (1) THE SETTLOR, A COTRUSTEE, OR A BENEFICIARY MAY
20 REQUEST THE COURT TO REMOVE A TRUSTEE, OR A TRUSTEE MAY BE REMOVED
21 BY THE COURT ON THE COURT'S OWN INITIATIVE;

22

(2) THE COURT MAY REMOVE A TRUSTEE IF:

23(I)THE TRUSTEE HAS COMMITTED A SERIOUS BREACH OF24TRUST;

25(II) LACK OF COOPERATION AMONG COTRUSTEES26SUBSTANTIALLY IMPAIRS THE ADMINISTRATION OF THE TRUST;

(III) BECAUSE OF UNFITNESS, UNWILLINGNESS, OR
PERSISTENT FAILURE OF THE TRUSTEE TO ADMINISTER THE TRUST
EFFECTIVELY, THE COURT DETERMINES THAT REMOVAL OF THE TRUSTEE BEST
SERVES THE INTERESTS OF THE BENEFICIARIES; OR

1 (IV) THERE HAS BEEN A SUBSTANTIAL CHANGE OF 2 CIRCUMSTANCES AND REMOVAL IS REQUESTED BY ALL OF THE QUALIFIED 3 BENEFICIARIES, THE COURT FINDS THAT REMOVAL OF THE TRUSTEE BEST 4 SERVES THE INTEREST OF ALL OF THE BENEFICIARIES AND IS NOT 5 INCONSISTENT WITH A MATERIAL PURPOSE OF THE TRUST, AND A SUITABLE 6 COTRUSTEE OR SUCCESSOR TRUSTEE IS AVAILABLE; AND

7 (3) PENDING A FINAL DECISION ON A REQUEST TO REMOVE A 8 TRUSTEE, OR IN LIEU OF OR IN ADDITION TO REMOVING A TRUSTEE, THE COURT 9 MAY ORDER APPROPRIATE RELIEF UNDER § 14.5–901(B) OF THIS TITLE AS MAY 10 BE NECESSARY TO PROTECT THE TRUST PROPERTY OR THE INTERESTS OF THE 11 BENEFICIARIES.

12 **14.5–707.**

(A) UNLESS A COTRUSTEE REMAINS IN OFFICE OR THE COURT
OTHERWISE ORDERS, AND UNTIL THE TRUST PROPERTY IS DELIVERED TO A
SUCCESSOR TRUSTEE OR OTHER PERSON ENTITLED TO THE TRUST PROPERTY,
A TRUSTEE THAT HAS RESIGNED OR BEEN REMOVED HAS THE DUTIES OF A
TRUSTEE AND THE POWERS NECESSARY TO PROTECT THE TRUST PROPERTY.

18 **(B)** A TRUSTEE THAT HAS RESIGNED OR HAS BEEN REMOVED SHALL 19 PROCEED EXPEDITIOUSLY TO DELIVER THE TRUST PROPERTY WITHIN THE 20 POSSESSION OF THE TRUSTEE TO THE COTRUSTEE, SUCCESSOR TRUSTEE, OR 21 OTHER PERSON ENTITLED TO THE TRUST PROPERTY.

22 **14.5–708.**

23(A) (1) **(I)** A TESTAMENTARY TRUSTEE AND TRUSTEE OF ANY 24OTHER TRUST WHOSE DUTIES COMPRISE THE COLLECTION AND DISTRIBUTION 25OF INCOME FROM PROPERTY HELD UNDER A TRUST AGREEMENT OR THE 26PRESERVATION AND DISTRIBUTION OF THE PROPERTY ARE ENTITLED TO 27COMMISSIONS PROVIDED FOR IN THIS SECTION FOR SERVICES IN 28ADMINISTERING THE TRUSTS.

29(II) THE AMOUNT AND SOURCE OF PAYMENT OF30COMMISSIONS ARE SUBJECT TO THE PROVISIONS OF ANY VALID AGREEMENT.

31(III) A COURT HAVING JURISDICTION OVER THE32ADMINISTRATION OF THE TRUST MAY INCREASE OR DIMINISH COMMISSIONS33FOR SUFFICIENT CAUSE OR MAY ALLOW SPECIAL COMMISSIONS OR34COMPENSATION FOR SERVICES OF AN UNUSUAL NATURE.

1 A SCHEDULE OF INCREASED RATES OF INCOME COMMISSIONS (2) $\mathbf{2}$ AND CORPUS COMMISSIONS MAY BE CHARGED BY A TRUSTEE WHOSE ACTIVITIES 3 ARE SUBJECT TO STATE OR FEDERAL SUPERVISION OR THAT IS A MEMBER OF THE MARYLAND BAR AND WHO HAS: 4 $\mathbf{5}$ **(I)** FILED A SCHEDULE OF THE INCREASED RATES OF 6 COMMISSIONS WITH AN APPROPRIATE AGENCY; AND 7 **(II)** GIVEN NOTICE OF THE SCHEDULED RATES OR 8 **REVISIONS TO THE QUALIFIED BENEFICIARIES OF THE AFFECTED TRUST.** 9 (3) THE NOTICE REQUIRED UNDER PARAGRAPH (2) OF THIS SUBSECTION SHALL BE DELIVERED TO THE QUALIFIED BENEFICIARIES 10 11 PERSONALLY OR SENT TO THE QUALIFIED BENEFICIARIES AT THEIR LAST 12KNOWN ADDRESS BY CERTIFIED MAIL, POSTAGE PREPAID, RETURN RECEIPT 13**REQUESTED.** 14ACCOUNTING FROM JULY 1, 1981, REGARDLESS OF WHETHER **(B)** (1) 15THE TRUST WAS IN EXISTENCE AT THAT TIME, INCOME COMMISSIONS ARE: **(I)** 16 6% ON ALL INCOME FROM REAL ESTATE, GROUND 17RENTS, AND MORTGAGES COLLECTED IN EACH YEAR; AND 6.5% ON THE FIRST \$10,000 OF ALL OTHER 18 **(II)** 1. 19 **INCOME COLLECTED IN EACH YEAR;** 202. 5% ON THE NEXT \$10,000; 213. 4% ON THE NEXT \$10,000; AND 224. **3% ON ANY REMAINDER.** 23(2) **(I)** INCOME COMMISSIONS SHALL BE PAID FROM AND 24CHARGEABLE AGAINST INCOME. 25**INCOME COLLECTED INCLUDES A PORTION OF INCOME (II)** 26PAYABLE TO A TRUSTEE BUT WITHHELD BY THE PAYOR IN COMPLIANCE WITH 27**REVENUE LAW.** 28ACCOUNTING FROM JULY 1, 1981, REGARDLESS OF WHETHER **(C)** (1)

THE TRUST WAS IN EXISTENCE AT THAT TIME, COMMISSIONS ARE PAYABLE AT
THE END OF EACH YEAR ON THE FAIR VALUE OF THE CORPUS OR PRINCIPAL
HELD IN TRUST AT THE END OF EACH YEAR AS FOLLOWS:

	68		SENATE BILL 240
1		(I)	0.4% ON THE FIRST \$250,000;
2		(II)	0.25% ON THE NEXT \$250,000;
3		(III)	0.15% ON THE NEXT \$500,000; AND
4		(IV)	0.1% ON ANY EXCESS.
5	(2)	CORI	PUS COMMISSIONS UNDER THIS SUBSECTION SHALL BE
6	PAID OUT OF AND	CHAR	GEABLE AGAINST THE CORPUS.

7 (3) IF A TRUST TERMINATES, WITH RESPECT TO ALL OR PART OF 8 THE CORPUS HELD IN TRUST IN THE COURSE OF A YEAR, THE COMMISSION FOR 9 THAT YEAR SHALL BE REDUCED OR PRORATED ACCORDING TO THE PART OF 10 THE YEAR ELAPSED AND THE AMOUNT OF CORPUS AS TO WHICH THE TRUST 11 TERMINATES, AND BE CHARGEABLE, FOR THAT PART OF THE YEAR, AND WITH 12 RESPECT TO THIS PART OF THE CORPUS, AT THE TERMINATION OF THE TRUST, 13 ON THE THEN VALUE OF THE CORPUS.

14**(D)** (1) FOR SELLING REAL OR LEASEHOLD PROPERTY, Α COMMISSION ON THE PROCEEDS OF THE SALE IS PAYABLE AT THE RATE 1516 ALLOWED BY RULE OF COURT OR STATUTE TO TRUSTEES APPOINTED TO MAKE 17 SALES UNDER DECREES OR ORDERS OF THE CIRCUIT COURT FOR THE COUNTY 18 WHERE THE REAL OR LEASEHOLD PROPERTY IS SITUATED, OR IF THE 19 **PROPERTY IS LOCATED OUTSIDE MARYLAND, FOR SELLING SIMILAR PROPERTY** 20IN THE COUNTY WHERE THE TRUST IS BEING ADMINISTERED.

21(2)THE COMMISSION DESCRIBED IN PARAGRAPH(1) OF THIS22SUBSECTION IS PAYABLE FROM THE PROCEEDS OF THE SALE WHEN23COLLECTED.

(E) (1) ON THE FINAL DISTRIBUTION OF A TRUST ESTATE OR A
PORTION OF A TRUST ESTATE, AN ALLOWANCE IS PAYABLE COMMENSURATE
WITH THE LABOR AND RESPONSIBILITY INVOLVED IN MAKING THE
DISTRIBUTION, INCLUDING THE MAKING OF A DIVISION, THE ASCERTAINMENT
OF THE PARTIES ENTITLED TO THE DISTRIBUTION, THE ASCERTAINMENT AND
PAYMENT OF TAXES, AND ANY NECESSARY TRANSFER OF ASSETS.

30(2)THE ALLOWANCE DESCRIBED IN PARAGRAPH(1) OF THIS31SUBSECTION IS SUBJECT TO REVISION OR DETERMINATION BY A CIRCUIT32COURT HAVING JURISDICTION.

1 (3) IN THE ABSENCE OF SPECIAL CIRCUMSTANCES, THE 2 ALLOWANCE DESCRIBED IN PARAGRAPH (1) OF THIS SUBSECTION SHALL BE 3 EQUAL TO 0.5% OF THE FAIR VALUE OF THE CORPUS THAT IS DISTRIBUTED.

4 (F) (1) IN DETERMINING WHAT IS A SINGLE TRUST FOR THE 5 APPLICATION OF THE RATES PROVIDED IN THIS SECTION, ALL PROPERTY HELD 6 UNDIVIDED UNDER THE TERMS OF THE WILL OR OTHER INSTRUMENT CREATING 7 THE TRUST SHALL BE CONSIDERED AS A SINGLE TRUST.

8 (2) AFTER SHARES HAVE BEEN SET APART OR DIVIDED IN 9 ACCORDANCE WITH PARAGRAPH (1) OF THIS SUBSECTION, TO BE HELD IN 10 SEPARATE TRUST, EACH SEPARATE TRUST SET APART SHALL BE CONSIDERED 11 AS A SINGLE TRUST.

12 (G) (1) INSTEAD OF THE RATES OF INCOME COMMISSIONS AND 13 CORPUS COMMISSIONS PROVIDED IN SUBSECTIONS (B) AND (C) OF THIS 14 SECTION, A TRUSTEE MAY CHARGE REASONABLE COMPENSATION CALCULATED 15 IN ACCORDANCE WITH A SCHEDULE OF RATES PREVIOUSLY FILED BY THE 16 TRUSTEE WITH THE APPROPRIATE AGENCY AS SPECIFIED IN PARAGRAPH (2) OF 17 THIS SUBSECTION, IF THE TRUSTEE IS:

18 (I) A FINANCIAL INSTITUTION WHOSE ACTIVITIES ARE 19 SUBJECT TO SUPERVISION BY THIS STATE OR THE FEDERAL GOVERNMENT OR 20 THAT IS AN INSTRUMENTALITY OF THE UNITED STATES; OR

21

(II) A MEMBER OF THE MARYLAND BAR.

22 (2) A TRUSTEE SHALL FILE A SCHEDULE OF RATES UNDER THIS 23 SUBSECTION AS FOLLOWS:

24 (I) FOR A SAVINGS AND LOAN ASSOCIATION, WITH THE 25 STATE DIRECTOR OF THE DIVISION OF SAVINGS AND LOAN ASSOCIATIONS;

(II) FOR ALL OTHER TRUSTEES, INCLUDING ATTORNEYS
 AND STATE CHARTERED AND NATIONAL BANKS, WITH THE COMMISSIONER OF
 FINANCIAL REGULATION; AND

(III) FOR A TRUSTEE ADMINISTERING AN ESTATE UNDER
THE JURISDICTION OF A COURT, IN ADDITION TO THE FILING DESCRIBED IN
ITEM (I) OR (II) OF THIS PARAGRAPH, WITH THE TRUST CLERK OF THE COURT.

32 (3) IN A TRUST INVOLVING MULTIPLE TRUSTEES IN WHICH MORE 33 THAN ONE OF THE TRUSTEES MAY BE ENTITLED TO FILE A SCHEDULE OF 34 INCREASED RATES, THE CONTROLLING SCHEDULE WILL BE THE SCHEDULE 1 FILED BY THE TRUSTEE HAVING CUSTODY OF THE ASSETS AND MAINTAINING 2 RECORDS OF THE TRUST.

3 (4) (1) ON THE FILING BY A TRUSTEE OF A SCHEDULE OF
 4 INCREASED RATES UNDER THIS SUBSECTION, THE TRUSTEE SHALL GIVE NOTICE
 5 TO THE QUALIFIED BENEFICIARIES OF EACH AFFECTED TRUST.

6 (II) THE NOTICE REQUIRED UNDER THIS PARAGRAPH 7 SHALL BE DELIVERED TO THE QUALIFIED BENEFICIARIES PERSONALLY OR 8 SENT TO THE QUALIFIED BENEFICIARIES AT THE LAST KNOWN ADDRESS OF THE 9 QUALIFIED BENEFICIARIES BY CERTIFIED MAIL, POSTAGE PREPAID, RETURN 10 RECEIPT REQUESTED.

11 (III) A QUALIFIED BENEFICIARY OF A TRUST THAT OBJECTS 12 TO THE SCHEDULE OF RATES TO BE CHARGED TO THAT TRUST, AFTER 13 NOTIFYING THE TRUSTEE OF THE OBJECTION, MAY PETITION THE 14 APPROPRIATE CIRCUIT COURT TO REVIEW THE REASONABLENESS OF THE 15 RATES TO BE CHARGED.

(IV) THE NOTICE REQUIRED BY THIS PARAGRAPH SHALL
 INCLUDE A CLEAR STATEMENT OF THE RIGHTS AND PROCEDURES AVAILABLE
 TO QUALIFIED BENEFICIARIES UNDER THIS SUBSECTION.

19 (V) IF THE COURT FINDS THAT THE RATES IN THE 20 SCHEDULE ARE UNREASONABLE FOR THE CURRENT FISCAL YEAR OF THE 21 PARTICULAR TRUST, THE COMMISSIONS OF THE TRUSTEE FOR THAT TRUST FOR 22 THAT FISCAL YEAR SHALL BE LIMITED TO THE RATES CHARGED THAT TRUST 23 DURING THE PREVIOUS FISCAL YEAR.

24 (5) IF A TRUSTEE DOES NOT FILE A SCHEDULE OF RATES WITH 25 THE APPROPRIATE AGENCY UNDER PARAGRAPH (2)(I) OR (II) OF THIS 26 SUBSECTION AND DOES NOT NOTIFY QUALIFIED BENEFICIARIES AS PROVIDED 27 IN PARAGRAPH (4) OF THIS SUBSECTION, THE TRUSTEE IS LIMITED TO 28 CHARGING THE RATES SET FORTH IN SUBSECTIONS (B) AND (C) OF THIS 29 SECTION.

30 (H) AN INDIVIDUAL TRUSTEE THAT IS NOT AUTHORIZED TO FILE A 31 SCHEDULE OF INCREASED RATES UNDER THIS SECTION IS LIMITED TO 32 CHARGING THE RATES SET FORTH IN SUBSECTIONS (B) AND (C) OF THIS 33 SECTION UNLESS THE TRUSTEE PETITIONS THE CIRCUIT COURT FOR THE 34 COUNTY WHERE THE TRUSTEE IS LOCATED AND OBTAINS APPROVAL OF AN 35 INCREASE IN FEE AFTER GIVING NOTICE OF THE ACTION TO THE QUALIFIED 36 BENEFICIARIES OF THE AFFECTED TRUSTS.

1 (I) THE SCHEDULE OF INCREASED RATES OF INCOME COMMISSIONS 2 AND CORPUS COMMISSIONS WHICH TRUSTEES ARE AUTHORIZED TO CHARGE AS 3 PROVIDED IN SUBSECTION (G) OF THIS SECTION IS NOT APPLICABLE TO 4 GUARDIANS.

5 (J) THE LEGAL AND COURT COSTS INCURRED BY THE TRUSTEE IN 6 ACCORDANCE WITH A COURT REVIEW UNDER SUBSECTION (G)(4) OR 7 SUBSECTION (H) OF THIS SECTION SHALL BE CHARGED AGAINST FEES OF THE 8 TRUSTEE AND MAY NOT BE ASSUMED BY THE TRUST OR THE BENEFICIARIES.

9 **14.5–709.**

10 (A) A TRUSTEE IS ENTITLED TO BE REIMBURSED OUT OF THE TRUST 11 PROPERTY, WITH INTEREST AS APPROPRIATE, FOR:

12 (1) EXPENSES THAT WERE PROPERLY INCURRED IN THE 13 ADMINISTRATION OF THE TRUST; AND

14(2) TO THE EXTENT NECESSARY TO PREVENT UNJUST15ENRICHMENT OF THE TRUST, EXPENSES THAT WERE NOT PROPERLY INCURRED16IN THE ADMINISTRATION OF THE TRUST.

17 **(B)** AN ADVANCE BY THE TRUSTEE OF MONEY FOR THE PROTECTION OF 18 THE TRUST GIVES RISE TO A LIEN AGAINST TRUST PROPERTY TO SECURE 19 REIMBURSEMENT WITH REASONABLE INTEREST.

20 **14.5–710.**

21 (A) THE FOLLOWING PERSONS MAY EXERCISE TRUST OR FIDUCIARY 22 POWERS IN THIS STATE:

23 (1) AN INDIVIDUAL;

24 (2) A TRUST COMPANY AS DEFINED IN § 1–101 OF THIS ARTICLE;

25(3) AN ORGANIZATION EXEMPT FROM TAXATION UNDER § 501(C)26OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED; AND

(4) SUBJECT TO SUBSECTION (B) OF THIS SECTION, A BANK,
TRUST COMPANY, OR SAVINGS BANK, OTHER THAN ONE DESCRIBED IN ITEM (2)
OF THIS SUBSECTION, THAT IS:

ORGANIZED UNDER THE LAWS OF ANOTHER STATE AND

AUTHORIZED TO EXERCISE TRUST OR FIDUCIARY POWERS IN THE STATE WHERE THE PRINCIPAL PLACE OF BUSINESS OF THE INSTITUTION IS LOCATED; OR **(II) ORGANIZED UNDER THE LAWS OF THE UNITED STATES** AND AUTHORIZED TO EXERCISE TRUST OR FIDUCIARY POWERS UNDER FEDERAL LAW. A BANK, TRUST COMPANY, OR SAVINGS BANK DESCRIBED IN **(B)** (1) SUBSECTION (A)(4) OF THIS SECTION MAY EXERCISE TRUST OR FIDUCIARY POWERS IN THIS STATE ONLY IF THE LAWS OF THE STATE WHERE ITS PRINCIPAL PLACE OF BUSINESS IS LOCATED AUTHORIZE A BANK, TRUST COMPANY, OR SAVINGS BANK FROM THIS STATE TO EXERCISE TRUST OR FIDUCIARY POWERS IN THAT STATE. (2) A BANK, TRUST COMPANY, OR SAVINGS BANK AUTHORIZED TO EXERCISE TRUST POWERS UNDER SUBSECTION (A)(4) OF THIS SECTION SHALL FILE WITH THE COMMISSIONER OF FINANCIAL REGULATION, BEFORE EXERCISING TRUST POWERS IN THIS STATE, INFORMATION SUFFICIENT TO **IDENTIFY: (I)** THE CORRECT CORPORATE NAME OF THE BANK, TRUST COMPANY, OR SAVINGS BANK; AN ADDRESS AND A TELEPHONE NUMBER OF A **(II)** CONTACT PERSON FOR THE BANK, TRUST COMPANY, OR SAVINGS BANK; (III) A RESIDENT AGENT; AND (IV) ADDITIONAL INFORMATION CONSIDERED NECESSARY BY THE COMMISSIONER FOR PROTECTION OF THE PUBLIC. 14.5-711. A JUDGE OF A COURT ESTABLISHED UNDER THE LAWS OF THE STATE OR

2627THE UNITED STATES OR A CLERK OF COURT OR REGISTER OF WILLS, UNLESS 28THE JUDGE, CLERK, OR REGISTER IS THE SURVIVING SPOUSE OF THE GRANTOR 29OF THE TRUST, OR IS RELATED TO THE GRANTOR WITHIN THE THIRD DEGREE, 30 MAY NOT SERVE AS A TRUSTEE OF AN INTER VIVOS OR TESTAMENTARY TRUST 31CREATED BY AN INSTRUMENT AND EXECUTED IN THE STATE BY THE GRANTOR 32OR A TRUSTEE, ADMINISTERED IN THE STATE, OR GOVERNED BY THE LAWS OF 33 THE STATE, UNLESS THE JUDGE, CLERK, OR REGISTER WAS ACTUALLY SERVING AS A TRUSTEE OF THE TRUST ON DECEMBER 31, 1969. 34

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SUBTITLE 8. DUTIES AND POWERS OF TRUSTEE.

2 **14.5–801.**

3 ON ACCEPTANCE OF A TRUSTEESHIP, THE TRUSTEE SHALL ADMINISTER 4 THE TRUST REASONABLY UNDER THE CIRCUMSTANCES, IN ACCORDANCE WITH 5 THE TERMS AND PURPOSES OF THE TRUST AND THE INTERESTS OF THE 6 BENEFICIARIES, AND IN ACCORDANCE WITH THIS TITLE.

7 **14.5–802.**

8 (A) A TRUSTEE SHALL ADMINISTER THE TRUST SOLELY IN THE 9 INTERESTS OF THE BENEFICIARIES.

10 **(B)** SUBJECT TO THE RIGHTS OF PERSONS DEALING WITH OR ASSISTING THE TRUSTEE AS PROVIDED IN § 14.5-909 OF THIS TITLE, A SALE, AN 11 12ENCUMBRANCE, OR ANY OTHER TRANSACTION INVOLVING THE INVESTMENT OR 13 MANAGEMENT OF TRUST PROPERTY ENTERED INTO BY THE TRUSTEE FOR THE 14 PERSONAL ACCOUNT OF THE TRUSTEE OR WHICH IS OTHERWISE AFFECTED BY A CONFLICT BETWEEN THE FIDUCIARY AND PERSONAL INTERESTS OF THE 1516 TRUSTEE IS VOIDABLE BY A BENEFICIARY AFFECTED BY THE TRANSACTION 17**UNLESS:**

18(1) THE TRANSACTION WAS AUTHORIZED BY THE TERMS OF THE19TRUST;

- 20
- (2) THE TRANSACTION WAS APPROVED BY THE COURT;

21 (3) THE BENEFICIARY DID NOT COMMENCE A JUDICIAL 22 PROCEEDING WITHIN THE TIME ALLOWED BY LAW;

(4) THE BENEFICIARY CONSENTED TO THE CONDUCT OF THE
TRUSTEE, RATIFIED THE TRANSACTION, OR RELEASED THE TRUSTEE IN
COMPLIANCE WITH § 14.5–907 OF THIS TITLE; OR

26 (5) THE TRANSACTION INVOLVES A CONTRACT ENTERED INTO OR
27 CLAIM ACQUIRED BY THE TRUSTEE BEFORE THE PERSON BECAME OR
28 CONTEMPLATED BECOMING THE TRUSTEE.

29 (C) A SALE, AN ENCUMBRANCE, OR ANY OTHER TRANSACTION 30 INVOLVING THE INVESTMENT OR MANAGEMENT OF TRUST PROPERTY IS 31 PRESUMED TO BE AFFECTED BY A CONFLICT BETWEEN PERSONAL AND 32 FIDUCIARY INTERESTS IF THE TRANSACTION IS ENTERED INTO BY THE TRUSTEE 33 WITH:

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(1) THE SPOUSE OF THE TRUSTEE;

2 (2) A DESCENDANT, SIBLING, OR PARENT OF THE TRUSTEE OR A 3 SPOUSE OF A DESCENDANT, SIBLING, OR PARENT OF THE TRUSTEE;

4

(3) AN AGENT OR ATTORNEY OF THE TRUSTEE; OR

5 (4) A CORPORATION OR ANY OTHER PERSON OR ENTERPRISE IN 6 WHICH THE TRUSTEE, OR A PERSON THAT OWNS A SIGNIFICANT INTEREST IN 7 THE TRUSTEE, HAS AN INTEREST THAT MIGHT AFFECT THE BEST JUDGMENT OF 8 THE TRUSTEE.

9 (D) A TRANSACTION THAT DOES NOT CONCERN TRUST PROPERTY IN 10 WHICH THE TRUSTEE ENGAGES IN AN INDIVIDUAL CAPACITY INVOLVES A 11 CONFLICT BETWEEN PERSONAL AND FIDUCIARY INTERESTS IF THE 12 TRANSACTION CONCERNS AN OPPORTUNITY PROPERLY BELONGING TO THE 13 TRUST.

14 **(E) (1)** IN VOTING SHARES OF STOCK OR IN EXERCISING POWERS OF 15 CONTROL OVER SIMILAR INTERESTS IN OTHER FORMS OF ENTERPRISE, THE 16 TRUSTEE SHALL ACT IN THE BEST INTERESTS OF THE BENEFICIARIES.

17 (2) IF THE TRUST IS THE SOLE OWNER OF A CORPORATION OR 18 ANY OTHER FORM OF ENTERPRISE, THE TRUSTEE SHALL ELECT OR APPOINT 19 DIRECTORS OR OTHER MANAGERS THAT WILL MANAGE THE CORPORATION OR 20 ENTERPRISE IN THE BEST INTERESTS OF THE BENEFICIARIES.

21 (F) THIS SECTION DOES NOT PRECLUDE THE FOLLOWING 22 TRANSACTIONS, IF FAIR TO THE BENEFICIARIES:

23(1) AN AGREEMENT BETWEEN A TRUSTEE AND A BENEFICIARY24RELATING TO THE APPOINTMENT OR COMPENSATION OF THE TRUSTEE;

25

(2) **PAYMENT OF REASONABLE COMPENSATION TO THE TRUSTEE;**

26 (3) A TRANSACTION BETWEEN A TRUST AND ANOTHER TRUST,
27 DECEDENT'S ESTATE, OR GUARDIANSHIP ESTATE OF WHICH THE TRUSTEE IS A
28 FIDUCIARY OR IN WHICH A BENEFICIARY HAS AN INTEREST; OR

29 (4) AN ADVANCE BY THE TRUSTEE OF MONEY FOR THE 30 PROTECTION OF THE TRUST.

1 (G) THE COURT MAY APPOINT A SPECIAL FIDUCIARY TO MAKE A 2 DECISION WITH RESPECT TO A PROPOSED TRANSACTION THAT MIGHT VIOLATE 3 THIS SECTION, IF ENTERED INTO BY THE TRUSTEE.

4 **14.5–803.**

5 IF A TRUST HAS TWO OR MORE BENEFICIARIES, THE TRUSTEE SHALL ACT 6 IMPARTIALLY IN INVESTING, MANAGING, AND DISTRIBUTING THE TRUST 7 PROPERTY, GIVING DUE REGARD TO THE RESPECTIVE INTERESTS OF THE 8 BENEFICIARIES.

9 **14.5–804.**

(A) A TRUSTEE SHALL ADMINISTER THE TRUST AS A PRUDENT PERSON
 WOULD, BY CONSIDERING THE PURPOSES, TERMS, DISTRIBUTIONAL
 REQUIREMENTS, AND OTHER CIRCUMSTANCES OF THE TRUST.

13 (B) IN SATISFYING THE STANDARD DESCRIBED IN SUBSECTION (A) OF 14 THIS SECTION, THE TRUSTEE SHALL EXERCISE REASONABLE CARE, SKILL, AND 15 CAUTION.

16 **14.5–805.**

IN ADMINISTERING A TRUST, THE TRUSTEE MAY INCUR ONLY COSTS THAT
 ARE REASONABLE IN RELATION TO THE TRUST PROPERTY, THE PURPOSES OF
 THE TRUST, AND THE SKILLS OF THE TRUSTEE.

20 **14.5–806.**

A TRUSTEE THAT HAS SPECIAL SKILLS OR EXPERTISE, OR IS NAMED TRUSTEE IN RELIANCE ON THE REPRESENTATION OF THE TRUSTEE THAT THE TRUSTEE HAS SPECIAL SKILLS OR EXPERTISE, SHALL USE THOSE SPECIAL SKILLS OR EXPERTISE.

25 **14.5–807.**

26 (A) (1) A TRUSTEE MAY DELEGATE DUTIES AND POWERS THAT A
27 PRUDENT TRUSTEE OF COMPARABLE SKILLS COULD PROPERLY DELEGATE
28 UNDER THE CIRCUMSTANCES TO AN AGENT, EVEN IF THE AGENT IS ASSOCIATED
29 WITH THE TRUSTEE.

30(2)A TRUSTEE SHALL EXERCISE REASONABLE CARE, SKILL, AND31CAUTION IN:

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SELECTING AN AGENT:

(I)

2 (II) ESTABLISHING THE SCOPE AND TERMS OF THE 3 DELEGATION, CONSISTENT WITH THE PURPOSES AND TERMS OF THE TRUST; 4 AND

5 (III) PERIODICALLY REVIEWING THE ACTIONS OF THE 6 AGENT IN ORDER TO MONITOR THE PERFORMANCE OF THE AGENT AND 7 COMPLIANCE WITH THE TERMS OF THE DELEGATION BY THE AGENT.

8 (B) IN PERFORMING A DELEGATED FUNCTION, AN AGENT OWES A DUTY 9 TO THE TRUST TO EXERCISE REASONABLE CARE TO COMPLY WITH THE TERMS 10 OF THE DELEGATION.

11 (C) BY ACCEPTING A DELEGATION OF POWERS OR DUTIES FROM THE 12 TRUSTEE OF A TRUST THAT IS SUBJECT TO THE LAWS OF THIS STATE, AN AGENT 13 SUBMITS TO THE JURISDICTION OF THE COURTS OF THIS STATE.

14(D) THIS SECTION DOES NOT APPLY TO A DELEGATION OF INVESTMENT15DUTIES OR POWERS IN ACCORDANCE WITH § 15–114 OF THIS ARTICLE.

16 **14.5–808.**

17 (A) WHILE A TRUST IS REVOCABLE, THE TRUSTEE MAY FOLLOW A 18 WRITTEN DIRECTION OF THE SETTLOR THAT IS CONTRARY TO THE TERMS OF 19 THE TRUST.

20**(**B**)** EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS (1) **(I)** 21SUBSECTION, IF THE TERMS OF A TRUST CONFER ON ONE OR MORE PERSONS, 22OTHER THAN THE SETTLOR OF A REVOCABLE TRUST, A POWER TO DIRECT, CONSENT TO, OR DISAPPROVE THE ACTUAL OR PROPOSED INVESTMENT 2324DECISIONS, DISTRIBUTION DECISIONS, OR OTHER DECISIONS OF THE TRUSTEE, 25THE PERSONS SHALL BE CONSIDERED ADVISERS AND FIDUCIARIES THAT, AS SUCH, ARE REQUIRED TO ACT REASONABLY UNDER THE CIRCUMSTANCES WITH 26REGARD TO THE PURPOSES OF THE TRUST AND THE INTERESTS OF THE 2728**BENEFICIARIES.**

29 (II) THE TRUSTEE MAY NOT ACT IN ACCORDANCE WITH AN 30 EXERCISE OF THE POWER IF:

311. THE ATTEMPTED EXERCISE IS MANIFESTLY32CONTRARY TO THE TERMS OF THE TRUST, UNLESS EXPRESSLY WAIVED IN33WRITING BY THE SETTLOR; OR

1	2. The trustee knows the attempted exercise			
2	WOULD CONSTITUTE A BREACH OF A FIDUCIARY DUTY THAT THE PERSON			
3	HOLDING THE POWER OWES TO THE BENEFICIARIES OF THE TRUST.			
4	(2) A BENEFICIARY THAT HOLDS A POWER TO DIRECT, CONSENT			
5	TO, OR DISAPPROVE OF A TRUSTEE ACTION MAY NOT BE TREATED AS A			
6	FIDUCIARY WITH RESPECT TO THE EXERCISE OF THE POWER TO THE EXTENT			
7	THAT THE ONLY PERSONS WHOSE INTERESTS IN THE TRUST ARE AFFECTED BY			
8	THE DECISION OF THE BENEFICIARY ARE THE BENEFICIARY AND THOSE DEDSONS WHOSE INTERESTS IN THE TRUST ARE SUBJECT TO CONTROL BY THE			
9 10	PERSONS WHOSE INTERESTS IN THE TRUST ARE SUBJECT TO CONTROL BY THE BENEFICIARY THROUGH THE EXERCISE OF A POWER OF APPOINTMENT.			
10	DENEFICIART THROUGH THE EXERCISE OF A FOWER OF AFTOINTMENT.			
11	(3) AN ADVISER UNDER THIS SUBSECTION IS LIABLE FOR A LOSS			
12	THAT RESULTS FROM BREACH OF A FIDUCIARY DUTY.			
13	(C) (1) IF THE TERMS OF A TRUST REQUIRE THAT A TRUSTEE SHALL			
14	FOLLOW THE DIRECTION OF AN ADVISER WITH RESPECT TO PROPOSED			
15	INVESTMENT DECISIONS, DISTRIBUTION DECISIONS, OR OTHER DECISIONS OF			
16	THE TRUSTEE:			
1 5				
17	(I) THE TRUSTEE SHALL ACT IN ACCORDANCE WITH THE			
18 19	DIRECTION OF THE ADVISER AND MAY NOT BE LIABLE FOR A LOSS RESULTING DIRECTLY OR INDIRECTLY FROM THE ACT EXCEPT IN THE CASE OF WILLFUL			
$\frac{15}{20}$	MISCONDUCT ON THE PART OF THE TRUSTEE; AND			
_ •				
21	(II) THE TRUSTEE SHALL HAVE NO DUTY TO:			
22	1. MONITOR THE CONDUCT OF THE ADVISER;			
23	2. PROVIDE ADVICE TO THE ADVISER; OR			
24	3. COMMUNICATE WITH, WARN, OR APPRISE A			
25	BENEFICIARY OR THIRD PARTY CONCERNING INSTANCES IN WHICH THE			
26	TRUSTEE WOULD OR MIGHT HAVE EXERCISED THE DISCRETION OF THE			
27	TRUSTEE IN A MANNER DIFFERENT FROM THE MANNER DIRECTED BY THE			
28	ADVISER.			
29	(2) ABSENT A PREPONDERANCE OF THE EVIDENCE TO THE			
30	CONTRARY, THE ACTIONS OF THE TRUSTEE PERTAINING TO MATTERS WITHIN			
31	THE SCOPE OF THE AUTHORITY OF THE ADVISER, SUCH AS CONFIRMING THAT			
32	THE DIRECTIONS OF THE ADVISER HAVE BEEN CARRIED OUT AND RECORDING			
33	AND REPORTING ACTIONS TAKEN AT THE DIRECTION OF THE ADVISER, SHALL			
34 25	BE PRESUMED TO BE ADMINISTRATIVE ACTIONS TAKEN BY THE TRUSTEE			
35	SOLELY TO ALLOW THE TRUSTEE TO PERFORM THOSE DUTIES ASSIGNED TO THE			

TRUSTEE BY THE TERMS OF THE TRUST, AND THESE ADMINISTRATIVE ACTIONS
 MAY NOT BE DEEMED TO CONSTITUTE AN UNDERTAKING BY THE TRUSTEE TO
 MONITOR THE ADVISER OR OTHERWISE PARTICIPATE IN ACTIONS WITHIN THE
 SCOPE OF THE AUTHORITY OF THE ADVISER.

5 (D) UNLESS THE TERMS OF A TRUST OTHERWISE PROVIDE, AN ADVISER 6 THAT IS GIVEN AUTHORITY WITH RESPECT TO INVESTMENT DECISIONS HAS THE 7 POWER TO PERFORM THE FOLLOWING:

8 (1) DIRECT THE TRUSTEE WITH RESPECT TO THE RETENTION, 9 PURCHASE, SALE, OR ENCUMBRANCE OF THE TRUST PROPERTY AND THE 10 INVESTMENT AND REINVESTMENT OF PRINCIPAL AND INCOME FROM THE 11 TRUST;

- 12
- (2) VOTE PROXIES FOR SECURITIES HELD IN TRUST; AND

13 (3) SELECT ONE OR MORE INVESTMENT ADVISERS, MANAGERS,
 14 OR COUNSELORS, INCLUDING THE TRUSTEE, AND DELEGATE TO THE ADVISERS,
 15 MANAGERS, OR COUNSELORS A POWER OF THE ADVISER.

16 (E) THE TERMS OF A TRUST MAY CONFER ON A TRUSTEE OR OTHER 17 PERSON A POWER TO DIRECT THE MODIFICATION OR TERMINATION OF THE 18 TRUST.

19 **14.5–809.**

A TRUSTEE SHALL TAKE REASONABLE STEPS TO TAKE CONTROL OF AND PROTECT THE TRUST PROPERTY, EXCEPT THAT THIS DUTY DOES NOT APPLY TO, AND THE TRUSTEE IS NOT RESPONSIBLE FOR, ITEMS OF TANGIBLE PERSONAL PROPERTY THAT ARE PROPERTY OF A TRUST THAT IS REVOCABLE BY THE SETTLOR AND THAT ARE NOT IN THE POSSESSION OR CONTROL OF THE TRUSTEE.

26 **14.5–810.**

27 (A) A TRUSTEE SHALL KEEP ADEQUATE RECORDS OF THE 28 ADMINISTRATION OF THE TRUST.

29 (B) A TRUSTEE SHALL KEEP TRUST PROPERTY SEPARATE FROM THE 30 PROPERTY OF THE TRUSTEE.

31 (C) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (D) OF THIS 32 SECTION, A TRUSTEE SHALL CAUSE THE TRUST PROPERTY TO BE DESIGNATED SO THAT THE INTEREST OF THE TRUST, TO THE EXTENT FEASIBLE, APPEARS IN
 RECORDS MAINTAINED BY A PARTY OTHER THAN A TRUSTEE OR BENEFICIARY.

3 (D) IF THE TRUSTEE MAINTAINS RECORDS CLEARLY INDICATING THE 4 RESPECTIVE INTERESTS, A TRUSTEE MAY INVEST AS A WHOLE THE PROPERTY 5 OF TWO OR MORE SEPARATE TRUSTS.

6 **14.5–811.**

7 (A) A TRUSTEE SHALL TAKE REASONABLE STEPS TO ENFORCE CLAIMS 8 OF THE TRUST AND TO DEFEND CLAIMS AGAINST THE TRUST.

9 (B) A TRUSTEE MAY ABANDON A CLAIM THAT IS UNREASONABLE TO 10 ENFORCE OR ASSIGN THE CLAIM TO ONE OR MORE OF THE BENEFICIARIES OF 11 THE TRUST HOLDING THE CLAIM.

12 **14.5–812.**

13(A)A TRUSTEE IS NOT LIABLE TO THE BENEFICIARY FOR A BREACH OF14TRUST COMMITTED BY A FORMER TRUSTEE.

15 (B) A TRUSTEE IS LIABLE TO THE BENEFICIARY FOR A BREACH OF 16 TRUST IF THE TRUSTEE:

17 (1) KNOWS OR SHOULD KNOW OF A SITUATION CONSTITUTING A
 18 BREACH OF TRUST COMMITTED BY A FORMER TRUSTEE AND THE TRUSTEE
 19 IMPROPERLY PERMITS IT TO CONTINUE;

20 (2) NEGLECTS TO TAKE REASONABLE STEPS TO COMPEL A 21 FORMER TRUSTEE OR OTHER PERSON TO DELIVER TRUST PROPERTY TO THE 22 TRUSTEE; OR

23(3) NEGLECTS TO TAKE REASONABLE STEPS TO REDRESS A24BREACH OF TRUST COMMITTED BY A FORMER TRUSTEE.

25 **14.5–813.**

(A) UNLESS UNREASONABLE UNDER THE CIRCUMSTANCES, A TRUSTEE
SHALL PROMPTLY RESPOND TO THE REQUEST OF A QUALIFIED BENEFICIARY
FOR INFORMATION RELATED TO THE ADMINISTRATION OF THE TRUST,
INCLUDING A COPY OF THE TRUST INSTRUMENT.

30 **(B) (1) A TRUSTEE:**

(I) WITHIN 60 DAYS AFTER ACCEPTING A TRUSTEESHIP,
 SHALL NOTIFY THE QUALIFIED BENEFICIARIES OF THE ACCEPTANCE AND OF
 THE TRUSTEE'S NAME, ADDRESS, AND TELEPHONE NUMBER; AND
 (II) WITHIN 90 DAYS AFTER THE DATE THE TRUSTEE

4 (II) WITHIN 90 DAYS AFTER THE DATE THE TRUSTEE 5 ACQUIRES KNOWLEDGE OF THE CREATION OF AN IRREVOCABLE TRUST, OR THE 6 DATE THE TRUSTEE ACQUIRES KNOWLEDGE THAT A FORMERLY REVOCABLE 7 TRUST HAS BECOME IRREVOCABLE, WHETHER BY THE DEATH OF THE SETTLOR 8 OR OTHERWISE, SHALL NOTIFY THE QUALIFIED BENEFICIARIES OF THE TRUST'S 9 EXISTENCE, OF THE IDENTITY OF THE SETTLOR OR SETTLORS, OF THE RIGHT TO 10 REQUEST A COPY OF THE TRUST INSTRUMENT, AND OF THE RIGHT TO A 11 TRUSTEE'S REPORT AS PROVIDED IN SUBSECTION (C) OF THIS SECTION.

12 (2) NOTWITHSTANDING § 14.5–109 OF THIS TITLE, NOTICE 13 REQUIRED UNDER THIS SUBSECTION SHALL BE:

- 14(I)TO THE EXTENT THE NAMES AND LOCATIONS OF THE15QUALIFIED BENEFICIARIES ARE KNOWN TO THE TRUSTEE:
- 161.BY DELIVERY OF THE NOTICE TO THE QUALIFIED17BENEFICIARIES PERSONALLY; OR

18 2. BY SENDING THE NOTICE TO THE QUALIFIED
 19 BENEFICIARIES AT THEIR LAST KNOWN ADDRESS BY CERTIFIED MAIL, POSTAGE
 20 PREPAID, RETURN RECEIPT REQUESTED; AND

(II) IF THE NAME, LOCATION, OR BOTH OF A QUALIFIED
BENEFICIARY IS NOT KNOWN TO THE TRUSTEE, BY PUBLICATION IN A
NEWSPAPER OF GENERAL CIRCULATION IN THE COUNTY WHERE THE TRUST
PROPERTY IS LOCATED ONCE A WEEK FOR 3 SUCCESSIVE WEEKS.

(C) (1) ON REQUEST BY A QUALIFIED BENEFICIARY, A TRUSTEE
SHALL SEND TO THE QUALIFIED BENEFICIARY ANNUALLY AND AT THE
TERMINATION OF THE TRUST A REPORT OF THE TRUST PROPERTY, LIABILITIES,
RECEIPTS, AND DISBURSEMENTS, INCLUDING THE SOURCE AND AMOUNT OF
THE COMPENSATION OF THE TRUSTEE, A LISTING OF THE TRUST ASSETS, AND,
IF FEASIBLE, THE RESPECTIVE MARKET VALUES OF THE TRUST ASSETS.

31 (2) ON A VACANCY IN A TRUSTEESHIP, UNLESS A COTRUSTEE
 32 REMAINS IN OFFICE, THE FORMER TRUSTEE SHALL SEND A REPORT TO THE
 33 QUALIFIED BENEFICIARIES THAT REQUEST THE REPORT.

1 (3) A PERSONAL REPRESENTATIVE, A GUARDIAN, OR 2 AN ATTORNEY-IN-FACT MAY SEND THE QUALIFIED BENEFICIARIES A REPORT 3 ON BEHALF OF THE FORMER TRUSTEE.

4 (D) (1) A QUALIFIED BENEFICIARY MAY WAIVE THE RIGHT TO A 5 TRUSTEE'S REPORT OR OTHER INFORMATION OTHERWISE REQUIRED TO BE 6 FURNISHED UNDER THIS SECTION.

7 (2) A QUALIFIED BENEFICIARY, WITH RESPECT TO FUTURE
8 REPORTS AND OTHER INFORMATION, MAY WITHDRAW A WAIVER PREVIOUSLY
9 GIVEN.

10 (E) SUBSECTION (B) OF THIS SECTION DOES NOT APPLY TO A TRUSTEE 11 THAT ACCEPTS A TRUSTEESHIP BEFORE OCTOBER 1, 2014 JANUARY 1, 2015, TO 12 AN IRREVOCABLE TRUST CREATED BEFORE OCTOBER 1, 2014 JANUARY 1, 2015, 13 OR TO A REVOCABLE TRUST THAT BECOMES IRREVOCABLE BEFORE OCTOBER 1, 14 2014 JANUARY 1, 2015.

15 **14.5–814.**

16 (A) NONE OF THE FOLLOWING POWERS CONFERRED ON A TRUSTEE BY 17 THE GOVERNING INSTRUMENT MAY BE EXERCISED BY THAT TRUSTEE:

18 (1) THE POWER TO MAKE DISCRETIONARY DISTRIBUTIONS OF 19 EITHER PRINCIPAL OR INCOME TO, OR FOR THE BENEFIT OF, THE TRUSTEE IN 20 THE INDIVIDUAL CAPACITY OF THE TRUSTEE, UNLESS LIMITED BY AN 21 ASCERTAINABLE STANDARD RELATING TO THE HEALTH, EDUCATION, SUPPORT, 22 OR MAINTENANCE OF THE TRUSTEE, AS DEFINED IN 26 U.S.C. §§ 2041 AND 2514 23 AND THE U.S. TREASURY REGULATIONS ISSUED UNDER THOSE SECTIONS;

24 (2) THE POWER TO MAKE DISCRETIONARY DISTRIBUTIONS OF 25 EITHER PRINCIPAL OR INCOME TO SATISFY A LEGAL OBLIGATION OF THE 26 TRUSTEE IN THE INDIVIDUAL CAPACITY OF THE TRUSTEE FOR SUPPORT OR 27 OTHER PURPOSES;

(3) THE POWER TO MAKE DISCRETIONARY ALLOCATIONS IN
 FAVOR OF THE TRUSTEE OF RECEIPTS OR EXPENSES AS BETWEEN INCOME AND
 PRINCIPAL;

31 (4) A POWER, IN WHATEVER CAPACITY HELD, TO REMOVE OR
 32 REPLACE A TRUSTEE THAT HOLDS A POWER PROSCRIBED IN THIS SUBSECTION;
 33 OR

1 (5) THE POWER TO EXERCISE A POWER PROSCRIBED IN THIS 2 SUBSECTION WITH REGARD TO A BENEFICIARY OTHER THAN THE TRUSTEE TO 3 THE EXTENT THAT THE BENEFICIARY COULD EXERCISE A SIMILAR PROHIBITED 4 POWER IN CONNECTION WITH A TRUST WHICH BENEFITS THE TRUSTEE.

5 (B) IF A TRUSTEE IS PROHIBITED BY SUBSECTION (A)(1) OF THIS 6 SECTION FROM EXERCISING A POWER CONFERRED ON THE TRUSTEE, THE 7 TRUSTEE MAY NEVERTHELESS EXERCISE THE POWER EXCEPT THAT THE 8 EXERCISE OF THAT POWER BY THE TRUSTEE SHALL BE LIMITED BY AN 9 ASCERTAINABLE STANDARD RELATING TO THE HEALTH, EDUCATION, SUPPORT, 10 OR MAINTENANCE OF THE TRUSTEE, AS DEFINED IN 26 U.S.C. §§ 2041 AND 2514 11 AND THE U.S. TREASURY REGULATIONS ISSUED UNDER THOSE SECTIONS.

12 (C) IF THE GOVERNING INSTRUMENT CONTAINS A POWER DESCRIBED 13 UNDER SUBSECTION (A) OF THIS SECTION, AND THERE IS NO TRUSTEE THAT 14 CAN EXERCISE THE POWER, ON APPLICATION OF A PARTY IN INTEREST, A 15 COURT MAY APPOINT A TRUSTEE THAT IS NOT OTHERWISE DISQUALIFIED 16 UNDER THIS SECTION TO EXERCISE THE POWER DURING THE PERIOD OF TIME 17 THAT THE COURT DESIGNATES.

18 (D) THIS SECTION DOES NOT APPLY IF:

(1) As a result of the application of subsection (a) of
THIS SECTION, A MARITAL DEDUCTION FOR THE TRUST PROPERTY WOULD NOT
BE ALLOWED TO A SPOUSE WHO IS A TRUSTEE AND TO WHOM A MARITAL
DEDUCTION WOULD OTHERWISE BE ALLOWED UNDER THE INTERNAL REVENUE
CODE;

24(2)THE TRUST IS REVOCABLE OR AMENDABLE, DURING THE25TIME THAT THE TRUST REMAINS REVOCABLE OR AMENDABLE; OR

26 (3) CONTRIBUTIONS TO THE TRUST QUALIFY FOR THE ANNUAL
27 EXCLUSION UNDER § 2503(C) OF THE INTERNAL REVENUE CODE OF 1986, AS
28 AMENDED, AS IN EFFECT ON THE EFFECTIVE DATE OF THIS TITLE, OR AS LATER
29 AMENDED.

- 30 (E) (1) IN THIS SUBSECTION, "PARTIES IN INTEREST" MEANS:
- 31

(I) EACH TRUSTEE OF THE TRUST THEN SERVING; AND

32(II) EACH INCOME BENEFICIARY AND REMAINDER33BENEFICIARY OF THE TRUST THEN IN EXISTENCE OR, IF THE BENEFICIARY HAS34NOT ATTAINED MAJORITY OR IS OTHERWISE INCAPACITATED, THE LEGAL35REPRESENTATIVE OF THE BENEFICIARY UNDER APPLICABLE LAW OR THE

1 DONEE OF THE BENEFICIARY UNDER A DURABLE POWER OF ATTORNEY THAT IS 2 SUFFICIENT TO GRANT THE AUTHORITY.

3 (2) EXCEPT AS PROVIDED IN SUBSECTION (D) OF THIS SECTION,
 4 THIS SECTION APPLIES TO:

5 (I) A TRUST CREATED UNDER A GOVERNING INSTRUMENT 6 EXECUTED AFTER SEPTEMBER 30, 1995, UNLESS THE TERMS OF THE 7 GOVERNING INSTRUMENT PROVIDE EXPRESSLY THAT THIS SECTION DOES NOT 8 APPLY; AND

9 (II) A TRUST CREATED UNDER A GOVERNING INSTRUMENT 10 EXECUTED BEFORE OCTOBER 1, 1995, UNLESS ALL PARTIES IN INTEREST 11 ELECT AFFIRMATIVELY NOT TO BE SUBJECT TO THE APPLICATION OF THIS 12 SECTION ON OR BEFORE THE LATER OF OCTOBER 1, 1998, AND 3 YEARS AFTER 13 THE DATE ON WHICH THE TRUST BECOMES IRREVOCABLE.

(F) THE AFFIRMATIVE ELECTION REQUIRED UNDER SUBSECTION (E) OF
 THIS SECTION SHALL BE MADE THROUGH A WRITTEN DECLARATION SIGNED BY
 THE INTERESTED PERSON AND DELIVERED TO THE TRUSTEE.

17 **14.5–815.**

18 (A) A TRUSTEE, WITHOUT AUTHORIZATION BY THE COURT, MAY 19 EXERCISE:

20 (1) POWERS CONFERRED BY THE TERMS OF THE TRUST; OR

21 (2) EXCEPT AS LIMITED BY THE TERMS OF THE TRUST:

22(I)ALL POWERS OVER THE TRUST PROPERTY THAT AN23UNMARRIED COMPETENT OWNER HAS OVER INDIVIDUALLY OWNED PROPERTY;

24(II) OTHER POWERS APPROPRIATE TO ACHIEVE THE25PROPER INVESTMENT, MANAGEMENT, AND DISTRIBUTION OF THE TRUST26PROPERTY; AND

27

(III) OTHER POWERS CONFERRED BY THIS TITLE.

28 (B) THE EXERCISE OF A POWER DESCRIBED IN SUBSECTION (A) OF THIS 29 SECTION IS SUBJECT TO THE FIDUCIARY DUTIES PRESCRIBED BY THIS TITLE.

30 **14.5–816.**

1 (A) A TRUSTEE HAS THOSE POWERS ENUMERATED IN THE TRUST 2 INSTRUMENT.

3 (B) WITHOUT LIMITING THE AUTHORITY CONFERRED BY § 14.5–815 OF 4 THIS TITLE AND § 15–102 OF THIS ARTICLE, A TRUSTEE MAY EXERCISE THE 5 POWERS SPECIFIED IN THIS SECTION.

6 (C) WITH RESPECT TO POSSIBLE LIABILITY FOR VIOLATION OF 7 ENVIRONMENTAL LAW, A TRUSTEE MAY:

8 (1) INSPECT OR INVESTIGATE PROPERTY THE TRUSTEE HOLDS 9 OR HAS BEEN ASKED TO HOLD, OR PROPERTY OWNED OR OPERATED BY AN 10 ORGANIZATION IN WHICH THE TRUSTEE HOLDS OR HAS BEEN ASKED TO HOLD 11 AN INTEREST, FOR THE PURPOSE OF DETERMINING THE APPLICATION OF 12 ENVIRONMENTAL LAW WITH RESPECT TO THE PROPERTY;

13 (2) TAKE ACTION TO PREVENT, ABATE, OR OTHERWISE REMEDY 14 ANY ACTUAL OR POTENTIAL VIOLATION OF ANY ENVIRONMENTAL LAW 15 AFFECTING PROPERTY HELD DIRECTLY OR INDIRECTLY BY THE TRUSTEE, 16 WHETHER TAKEN BEFORE OR AFTER THE ASSERTION OF A CLAIM OR THE 17 INITIATION OF GOVERNMENTAL ENFORCEMENT;

18 (3) DECLINE TO ACCEPT PROPERTY INTO TRUST OR DISCLAIM A
19 POWER WITH RESPECT TO PROPERTY THAT IS OR MAY BE BURDENED WITH
20 LIABILITY FOR VIOLATION OF ENVIRONMENTAL LAW;

21(4)COMPROMISE CLAIMS AGAINST THE TRUST WHICH MAY BE22ASSERTED FOR AN ALLEGED VIOLATION OF ENVIRONMENTAL LAW; AND

23 (5) PAY THE EXPENSE OF AN INSPECTION, A REVIEW, AN 24 ABATEMENT, OR A REMEDIAL ACTION TO COMPLY WITH ENVIRONMENTAL LAW.

25 (D) A TRUSTEE MAY DONATE A CONSERVATION EASEMENT ON REAL 26 PROPERTY, OR CONSENT TO THE DONATION OF A CONSERVATION EASEMENT ON 27 REAL PROPERTY BY A PERSONAL REPRESENTATIVE OF AN ESTATE OF WHICH 28 THE TRUSTEE IS A LEGATEE, IN ORDER TO OBTAIN THE BENEFIT OF THE ESTATE 29 TAX EXCLUSION ALLOWED UNDER § 2031(C) OF THE INTERNAL REVENUE CODE 30 OF 1986, AS AMENDED, IF:

31(1)THE GOVERNING INSTRUMENT AUTHORIZES OR DIRECTS THE32DONATION OF A CONSERVATION EASEMENT ON THE REAL PROPERTY; OR

1 (2) EACH BENEFICIARY THAT HAS AN INTEREST IN THE REAL 2 PROPERTY THAT WOULD BE AFFECTED BY THE CONSERVATION EASEMENT 3 CONSENTS IN WRITING TO THE DONATION.

4 **14.5–817.**

5 (A) (1) ON TERMINATION OR PARTIAL TERMINATION OF A TRUST, 6 THE TRUSTEE MAY SEND TO THE BENEFICIARIES A PROPOSAL FOR 7 DISTRIBUTION.

8 (2) THE RIGHT OF A BENEFICIARY TO OBJECT TO A PROPOSED 9 DISTRIBUTION UNDER PARAGRAPH (1) OF THIS SUBSECTION TERMINATES IF 10 THE BENEFICIARY DOES NOT NOTIFY THE TRUSTEE OF AN OBJECTION WITHIN 11 60 DAYS AFTER THE PROPOSAL WAS SENT BUT ONLY IF THE PROPOSAL 12 INFORMED THE BENEFICIARY OF THE RIGHT TO OBJECT AND OF THE TIME 13 ALLOWED FOR OBJECTION.

14 **(B)** ON THE OCCURRENCE OF AN EVENT TERMINATING OR PARTIALLY 15 TERMINATING A TRUST, THE TRUSTEE SHALL PROCEED EXPEDITIOUSLY TO 16 DISTRIBUTE THE TRUST PROPERTY TO THE PERSONS ENTITLED TO THE TRUST 17 PROPERTY, SUBJECT TO THE RIGHT OF THE TRUSTEE TO RETAIN A 18 REASONABLE RESERVE FOR THE PAYMENT OF DEBTS, EXPENSES, AND TAXES.

SUBTITLE 9. LIABILITY OF TRUSTEES AND RIGHTS OF PERSONS DEALING WITH THE TRUSTEE.

21 **14.5–901.**

22 (A) (1) A VIOLATION BY A TRUSTEE OF A DUTY THE TRUSTEE OWES 23 TO A BENEFICIARY IS A BREACH OF TRUST.

24(2)A BREACH OF TRUST UNDER THIS SUBSECTION MAY OCCUR25BY REASON OF AN ACTION OR BY REASON OF A FAILURE TO ACT.

26 **(B)** TO REMEDY A BREACH OF TRUST BY THE TRUSTEE THAT HAS 27 OCCURRED OR MAY OCCUR, THE COURT MAY:

28 (1) COMPEL THE TRUSTEE TO PERFORM THE DUTIES OF THE 29 TRUSTEE;

30(2) ENJOIN THE TRUSTEE FROM COMMITTING A BREACH OF31TRUST;

	86 SENATE BILL 240
$\frac{1}{2}$	(3) COMPEL THE TRUSTEE TO REDRESS A BREACH OF TRUST BY PAYING MONEY, RESTORING PROPERTY, OR OTHER MEANS;
3	(4) ORDER A TRUSTEE TO ACCOUNT;
4 5	(5) APPOINT A SPECIAL FIDUCIARY TO TAKE POSSESSION OF THE TRUST PROPERTY AND ADMINISTER THE TRUST;
6	(6) SUSPEND THE TRUSTEE;
7 8	(7) REMOVE THE TRUSTEE AS PROVIDED IN § 14.5–706 OF THIS TITLE;
9	(8) REDUCE OR DENY COMPENSATION TO THE TRUSTEE;
10 11 12 13	(9) SUBJECT TO § 14.5–909 OF THIS SUBTITLE, VOID AN ACT OF THE TRUSTEE, IMPOSE A LIEN OR A CONSTRUCTIVE TRUST ON TRUST PROPERTY, OR TRACE TRUST PROPERTY WRONGFULLY DISPOSED OF AND RECOVER THE PROPERTY OR PROCEEDS FROM THE PROPERTY; OR
14	(10) ORDER OTHER APPROPRIATE RELIEF.
15	14.5–902.
16 17	(A) A TRUSTEE THAT COMMITS A BREACH OF TRUST IS LIABLE TO THE BENEFICIARIES AFFECTED BY THE BREACH FOR THE GREATER OF:
18 19 20	(1) THE AMOUNT REQUIRED TO RESTORE THE VALUE OF THE TRUST PROPERTY AND TRUST DISTRIBUTIONS TO WHAT THEY WOULD HAVE BEEN HAD THE BREACH NOT OCCURRED; OR
21	(2) THE PROFIT THE TRUSTEE MADE BY REASON OF THE BREACH.
$22 \\ 23 \\ 24 \\ 25$	(B) (1) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION, IF MORE THAN ONE TRUSTEE IS LIABLE TO THE BENEFICIARIES FOR A BREACH OF TRUST, A TRUSTEE IS ENTITLED TO CONTRIBUTION FROM THE OTHER TRUSTEE OR TRUSTEES THAT ARE ALSO LIABLE.
26 27 28	(2) A TRUSTEE THAT RECEIVED A BENEFIT FROM A BREACH OF TRUST UNDER THIS SUBSECTION IS NOT ENTITLED TO CONTRIBUTION FROM ANOTHER TRUSTEE TO THE EXTENT OF THE BENEFIT RECEIVED.
29	14.5-903.

1 ABSENT A BREACH OF TRUST OR THE APPLICABLE STANDARD OF CARE, A $\mathbf{2}$ TRUSTEE IS NOT LIABLE TO A BENEFICIARY FOR A LOSS OR DEPRECIATION IN 3 THE VALUE OF TRUST PROPERTY OR FOR NOT HAVING MADE A PROFIT. 14.5–904. RESERVED. 4 14.5–905. RESERVED. 5 6 14.5-906. 7 (A) A TERM OF A TRUST RELIEVING A TRUSTEE OF LIABILITY FOR BREACH OF TRUST IS UNENFORCEABLE TO THE EXTENT THAT THE TERM: 8 9 (1) **RELIEVES THE TRUSTEE OF LIABILITY FOR BREACH OF TRUST** 10 COMMITTED IN BAD FAITH OR WITH RECKLESS INDIFFERENCE TO THE PURPOSES OF THE TRUST OR THE INTERESTS OF THE BENEFICIARIES; 11 12 (2) WAS INSERTED INTO THE TRUST AS THE RESULT OF AN ABUSE BY THE TRUSTEE OF A FIDUCIARY OR CONFIDENTIAL RELATIONSHIP TO THE 13 14 SETTLOR; OR 15(3) WAS UNREASONABLE UNDER THE CIRCUMSTANCES. 16 AN EXCULPATORY TERM DRAFTED OR CAUSED TO BE DRAFTED BY **(B)** 17THE TRUSTEE IS INVALID AS AN ABUSE OF A FIDUCIARY OR CONFIDENTIAL RELATIONSHIP UNLESS THE TRUSTEE PROVES THAT THE EXCULPATORY TERM 18 19 IS FAIR UNDER THE CIRCUMSTANCES AND THAT THE EXISTENCE AND CONTENTS OF THE EXCULPATORY TERM WERE ADEQUATELY COMMUNICATED TO THE 2021SETTLOR. 22**(C)** IF THE SETTLOR WAS REPRESENTED BY INDEPENDENT COUNSEL, 23AN EXCULPATORY TERM IS NOT CONSIDERED DRAFTED OR CAUSED TO BE 24DRAFTED BY THE TRUSTEE, EVEN IF THE TERM INCORPORATES SUGGESTED **PROVISIONS PROVIDED BY THE TRUSTEE.** 2514.5-907. 2627A TRUSTEE IS NOT LIABLE TO A BENEFICIARY FOR BREACH OF TRUST IF 28THE BENEFICIARY CONSENTED TO THE CONDUCT CONSTITUTING THE BREACH, 29RELEASED THE TRUSTEE FROM LIABILITY FOR THE BREACH, OR RATIFIED THE 30 TRANSACTION CONSTITUTING THE BREACH, UNLESS: 31 (1) THE CONSENT, RELEASE, OR RATIFICATION OF THE 32BENEFICIARY WAS INDUCED BY IMPROPER CONDUCT OF THE TRUSTEE; OR

1 (2) AT THE TIME OF THE CONSENT, RELEASE, OR RATIFICATION, 2 THE BENEFICIARY DID NOT KNOW OF THE RIGHTS OF THE BENEFICIARY OR OF 3 THE MATERIAL FACTS RELATING TO THE BREACH.

4 **14.5–908.**

5 (A) EXCEPT AS OTHERWISE PROVIDED IN THE CONTRACT, A TRUSTEE IS 6 NOT PERSONALLY LIABLE ON A CONTRACT PROPERLY ENTERED INTO BY THE 7 TRUSTEE IN THE FIDUCIARY CAPACITY OF THE TRUSTEE IN THE COURSE OF 8 ADMINISTERING THE TRUST IF THE TRUSTEE IN THE CONTRACT DISCLOSED THE 9 FIDUCIARY CAPACITY.

10 (B) A CLAIM BASED ON A CONTRACT ENTERED INTO BY A TRUSTEE IN 11 THE FIDUCIARY CAPACITY OF THE TRUSTEE, ON AN OBLIGATION ARISING FROM 12 OWNERSHIP OR CONTROL OF TRUST PROPERTY, OR ON A TORT COMMITTED IN 13 THE COURSE OF ADMINISTERING A TRUST, MAY BE ASSERTED IN A JUDICIAL 14 PROCEEDING AGAINST THE TRUSTEE IN THE FIDUCIARY CAPACITY OF THE 15 TRUSTEE, REGARDLESS OF WHETHER THE TRUSTEE IS PERSONALLY LIABLE 16 FOR THE CLAIM.

17 **14.5–909.**

18 (A) IN THE ABSENCE OF ACTUAL KNOWLEDGE OR OF REASONABLE 19 CAUSE TO INQUIRE AS TO WHETHER A TRUSTEE IS IMPROPERLY EXERCISING 20 THE TRUSTEE'S POWER, A PERSON DEALING WITH A TRUSTEE NEED NOT 21 INQUIRE WHETHER A TRUSTEE IS PROPERLY EXERCISING THE POWER OF THE 22 TRUSTEE AND IS PROTECTED AS IF THE TRUSTEE PROPERLY EXERCISED THE 23 POWER.

24(B) A PERSON NEED NOT SEE TO THE PROPER APPLICATION OF TRUST25ASSETS PAID OR DELIVERED TO A TRUSTEE.

26 **14.5–910**.

(A) INSTEAD OF FURNISHING A COPY OF THE TRUST INSTRUMENT TO A
PERSON OTHER THAN A BENEFICIARY, THE TRUSTEE MAY FURNISH TO THE
PERSON A CERTIFICATION OF TRUST CONTAINING THE FOLLOWING
INFORMATION:

31 (1) THAT THE TRUST EXISTS AND THE DATE THE TRUST 32 INSTRUMENT WAS EXECUTED;

33 (2) THE IDENTITY OF THE SETTLOR;

1 (3) THE IDENTITY AND ADDRESS OF THE CURRENTLY ACTING $\mathbf{2}$ TRUSTEE; 3 (4) THE POWERS OF THE TRUSTEE IN THE PENDING 4 TRANSACTION; $\mathbf{5}$ (5) THE REVOCABILITY OR IRREVOCABILITY OF THE TRUST AND 6 THE IDENTITY OF A PERSON HOLDING A POWER TO REVOKE THE TRUST; 7 (6) THE AUTHORITY OF COTRUSTEES TO SIGN OR OTHERWISE 8 AUTHENTICATE AND WHETHER THE AUTHENTICATION OF ALL OR FEWER THAN 9 ALL OF THE COTRUSTEES IS REQUIRED IN ORDER TO EXERCISE POWERS OF THE 10 TRUSTEE; THE TAXPAYER IDENTIFICATION NUMBER OF THE TRUST, 11 (7) 12UNLESS THE TAXPAYER IDENTIFICATION NUMBER IS ALSO THE SOCIAL 13 SECURITY NUMBER OF A SETTLOR; AND 14(8) THE MANNER AND NAME IN WHICH TITLE TO TRUST 15**PROPERTY MAY BE TAKEN.** 16 A CERTIFICATION OF TRUST MAY BE SIGNED OR OTHERWISE **(B)** 17AUTHENTICATED BY A TRUSTEE. 18 A CERTIFICATION OF TRUST SHALL STATE THAT THE TRUST HAS (C) 19 NOT BEEN REVOKED, MODIFIED, OR AMENDED IN A MANNER THAT WOULD 20CAUSE THE REPRESENTATIONS CONTAINED IN THE CERTIFICATION OF TRUST 21TO BE INCORRECT. 22**(D)** A CERTIFICATION OF TRUST NEED NOT CONTAIN THE DISPOSITIVE 23TERMS OF A TRUST. 24A RECIPIENT OF A CERTIFICATION OF TRUST MAY REQUIRE THE **(E)** 25TRUSTEE TO FURNISH COPIES OF THOSE EXCERPTS FROM THE ORIGINAL TRUST 26INSTRUMENT AND LATER AMENDMENTS WHICH DESIGNATE THE TRUSTEE AND 27CONFER ON THE TRUSTEE THE POWER TO ACT IN THE PENDING TRANSACTION. 28**(F)** A PERSON THAT ACTS REASONABLY IN RELIANCE ON Α 29CERTIFICATION OF TRUST WITHOUT KNOWLEDGE THAT THE REPRESENTATIONS 30 CONTAINED IN THE CERTIFICATION ARE INCORRECT IS NOT LIABLE FOR THE 31ACT.

89

1 (G) WHILE ACTING REASONABLY UNDER THE CIRCUMSTANCES, A 2 PERSON THAT ENTERS INTO A TRANSACTION IN RELIANCE ON A CERTIFICATION 3 OF TRUST MAY ENFORCE THE TRANSACTION AGAINST THE TRUST PROPERTY AS 4 IF THE REPRESENTATIONS CONTAINED IN THE CERTIFICATION WERE CORRECT.

- 5 (H) THIS SECTION DOES NOT LIMIT THE:
- 6 (1) THE RIGHT OF A PERSON TO OBTAIN A COPY OF THE TRUST 7 INSTRUMENT IN A JUDICIAL PROCEEDING CONCERNING THE TRUST; OR

8 (2) THE RIGHT OF A TITLE INSURANCE PRODUCER OR TITLE 9 INSURER TO OBTAIN A COPY OF THE TRUST INSTRUMENT FOR THE SOLE 10 PURPOSE OF DETERMINING WHETHER THE SETTLOR'S INTEREST IN REAL 11 PROPERTY MAY BE SUBJECT TO CREDITORS' CLAIMS, WHEN THE TRUSTEE IS 12 SELLING, ENCUMBERING, OR DISPOSING OF THE REAL PROPERTY AND TITLE 13 INSURANCE HAS BEEN REQUESTED FOR THE TRANSACTION.

14

SUBTITLE 10. MISCELLANEOUS PROVISIONS.

15 **14.5–1001.**

16 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE 17 MEANINGS INDICATED.

18 (2) "CONSIDERATION" DOES NOT INCLUDE THE AMOUNT OF ANY
 19 OBLIGATION UNDER A MORTGAGE OR DEED OF TRUST ENCUMBERING THE
 20 TRANSFERRED PROPERTY.

- 21
- (3) "TRUST" DOES NOT INCLUDE:

22(I)A REAL ESTATE INVESTMENT TRUST AS DEFINED IN §238–101 OF THE CORPORATIONS AND ASSOCIATIONS ARTICLE; OR

24(II)A STATUTORY TRUST AS DEFINED IN § 12–101 OF THE25CORPORATIONS AND ASSOCIATIONS ARTICLE.

(B) A RECORDATION TAX, TRANSFER TAX, OR ANY OTHER STATE OR
LOCAL EXCISE TAX MAY NOT BE IMPOSED ON THE TRANSFER OF REAL
PROPERTY OR AN INTEREST IN REAL PROPERTY WITHOUT CONSIDERATION OR
ON THE RECORDATION OF AN INSTRUMENT THAT TRANSFERS REAL PROPERTY
OR AN INTEREST IN REAL PROPERTY WITHOUT CONSIDERATION IF:

31 (1) THE TRANSFER IS TO A TRUST; OR

1 (2) THE TRANSFER IS FROM A TRUST TO ONE OR MORE 2 BENEFICIARIES AND:

3 (I) THE TRANSFER IS MADE TO A PERSON THAT WOULD BE
4 EXEMPT FROM TAX UNDER TITLE 12 OR TITLE 13 OF THE TAX – PROPERTY
5 ARTICLE IF THE TRANSFER HAD BEEN MADE TO THAT PERSON DIRECTLY BY
6 THE GRANTOR; OR

(II) THE TRANSFER IS MADE DURING THE LIFE OF THE
8 GRANTOR OF THE TRUST AND THE TRUSTEE OF THE TRUST ORIGINALLY
9 ACQUIRED THE REAL PROPERTY FOR ADEQUATE CONSIDERATION.

10 **14.5–1002.**

(A) IN THIS SECTION, "SPECIAL NEEDS TRUST" AND "SUPPLEMENTAL
 NEEDS TRUST" INCLUDE A TRUST FUNDED BY A TRUST BENEFICIARY OR BY A
 THIRD PARTY.

14 (B) IT IS THE POLICY OF THE STATE TO ENCOURAGE THE USE OF A 15 SPECIAL NEEDS TRUST OR SUPPLEMENTAL NEEDS TRUST BY AN INDIVIDUAL OF 16 ANY AGE WITH DISABILITIES TO PRESERVE FUNDS TO PROVIDE FOR THE NEEDS 17 OF THE INDIVIDUAL NOT MET BY PUBLIC BENEFITS AND TO ENHANCE QUALITY 18 OF LIFE.

19 (C) (1) EACH STATE AGENCY THAT PROVIDES PUBLIC BENEFITS TO 20 INDIVIDUALS OF ANY AGE WITH DISABILITIES THROUGH MEANS-TESTED 21 PROGRAMS, INCLUDING THE MEDICAL ASSISTANCE PROGRAM, SHALL ADOPT 22 REGULATIONS THAT:

(I) ARE NOT MORE RESTRICTIVE THAN EXISTING FEDERAL
LAW, REGULATIONS, OR POLICIES WITH REGARD TO THE TREATMENT OF A
SPECIAL NEEDS TRUST OR SUPPLEMENTAL NEEDS TRUST, INCLUDING A TRUST
DEFINED IN 42 U.S.C. § 1396P(C)(2) AND (D)(4);

27(II) ARE NOT MORE RESTRICTIVE THAN ANY STATE LAW28REGARDING TRUSTS, INCLUDING ANY STATE LAW REGARDING THE29REASONABLE EXERCISE OF DISCRETION BY A TRUSTEE, GUARDIAN, OR30CONSERVATOR IN THE BEST INTERESTS OF THE BENEFICIARY; AND

(III) DO NOT REQUIRE DISCLOSURE OF A BENEFICIARY'S
 PERSONAL OR CONFIDENTIAL INFORMATION WITHOUT THE CONSENT OF THE
 BENEFICIARY.

1 (2) THE REGULATIONS DESCRIBED IN PARAGRAPH (1) OF THIS 2 SUBSECTION SHALL ALLOW:

3 (I) AN INDIVIDUAL ACCOUNT IN A POOLED ASSET SPECIAL
 4 NEEDS TRUST TO BE FUNDED WITHOUT FINANCIAL LIMIT;

 $\mathbf{5}$ **(II)** A FUND IN A SPECIAL NEEDS TRUST, SUPPLEMENTAL 6 NEEDS TRUST, OR POOLED ASSET SPECIAL NEEDS TRUST TO BE USED FOR THE 7SOLE BENEFIT OF THE BENEFICIARY INCLUDING, AT THE DISCRETION OF THE 8 TRUSTEE. DISTRIBUTIONS FOR FOOD, SHELTER, UTILITIES. AND 9 **TRANSPORTATION:**

10 (III) AN INDIVIDUAL TO ESTABLISH OR FUND AN INDIVIDUAL 11 ACCOUNT IN A POOLED ASSET SPECIAL NEEDS TRUST WITHOUT AN AGE LIMIT 12 OR A TRANSFER PENALTY;

13(IV) AN INDIVIDUAL TO FUND A SPECIAL NEEDS TRUST OR14SUPPLEMENTAL NEEDS TRUST FOR THE INDIVIDUAL'S CHILD WITH15DISABILITIES WITHOUT A TRANSFER PENALTY AND REGARDLESS OF THE16CHILD'S AGE; AND

(V) ALL LEGALLY ASSIGNABLE INCOME OR RESOURCES TO
 BE ASSIGNED TO A SPECIAL NEEDS TRUST, SUPPLEMENTAL NEEDS TRUST, OR
 POOLED ASSET SPECIAL NEEDS TRUST WITHOUT LIMIT.

20 (3) NOTHING IN THIS SUBSECTION MAY BE INTERPRETED TO
21 REQUIRE A COURT ORDER TO AUTHORIZE A DISBURSEMENT FROM A SPECIAL
22 OR SUPPLEMENTAL NEEDS TRUST.

(D) (1) A DETERMINATION OF THE INTERNAL REVENUE SERVICE
 REGARDING THE NONPROFIT STATUS OF AN ORGANIZATION OPERATING A
 POOLED ASSET SPECIAL NEEDS TRUST SHALL BE SUFFICIENT TO SATISFY THE
 NONPROFIT REQUIREMENT OF 42 U.S.C. § 1396P(D)(4)(C).

27(2)ASTATEAGENCYMAYNOTIMPOSEADDITIONAL28REQUIREMENTS ON AN ORGANIZATION DESCRIBED IN PARAGRAPH(1) OF THIS29SUBSECTION FOR THE PURPOSE OF QUALIFYING OR DISQUALIFYING THE30ORGANIZATION FROM OFFERING A POOLED ASSET SPECIAL NEEDS TRUST.

(E) A REGULATION ADOPTED BY A STATE AGENCY REGARDING POOLED
 SPECIAL NEEDS TRUSTS SHALL APPLY ONLY TO THOSE TRUST BENEFICIARIES
 WHO ARE STATE RESIDENTS OR WHO RECEIVE PUBLIC BENEFITS FUNDED BY
 THE STATE.

1 **14.5–1003.**

2 (A) AN INDIVIDUAL WHO CREATES A TRUST MAY NOT BE CONSIDERED 3 THE SETTLOR OF THAT TRUST WITH REGARD TO THE INDIVIDUAL'S INTEREST IN 4 THE TRUST IF:

5 (1) THAT INTEREST IS THE AUTHORITY OF THE TRUSTEE UNDER 6 THE TRUST INSTRUMENT OR ANY OTHER PROVISION OF LAW TO PAY OR 7 REIMBURSE THE INDIVIDUAL FOR ANY TAX ON TRUST INCOME OR TRUST 8 PRINCIPAL THAT IS PAYABLE BY THE INDIVIDUAL UNDER THE LAW IMPOSING 9 THAT TAX; OR

10

(2) ALL OF THE FOLLOWING APPLY:

11(I)THE INDIVIDUAL CREATES OR HAS CREATED THE TRUST12FOR THE BENEFIT OF THE INDIVIDUAL'S SPOUSE;

(II) THE TRUST IS TREATED AS QUALIFIED TERMINABLE
 INTEREST PROPERTY UNDER § 2523(F) OF THE INTERNAL REVENUE CODE OF
 1986; AND

16 (III) THE INDIVIDUAL'S INTEREST IN THE TRUST INCOME, 17 TRUST PRINCIPAL, OR BOTH FOLLOWS THE TERMINATION OF THE SPOUSE'S 18 PRIOR INTEREST IN THE TRUST.

(B) A CREDITOR OF AN INDIVIDUAL DESCRIBED IN SUBSECTION (A) OF
 THIS SECTION MAY NOT ATTACH, EXERCISE, REACH, OR OTHERWISE COMPEL
 DISTRIBUTION OF:

22

(1) ANY PRINCIPAL OR INCOME OF THE TRUST;

(2) ANY PRINCIPAL OR INCOME OF ANY OTHER TRUST TO THE
 EXTENT THAT THE PROPERTY HELD IN THE OTHER TRUST IS ATTRIBUTABLE TO
 A TRUST DESCRIBED IN SUBSECTION (A)(2) OF THIS SECTION;

26

(3) THE INDIVIDUAL'S INTEREST IN THE TRUST; OR

(4) THE INDIVIDUAL'S INTEREST IN ANY OTHER TRUST TO THE
EXTENT THAT THE PROPERTY HELD IN THE OTHER TRUST IS ATTRIBUTABLE TO
A TRUST DESCRIBED IN SUBSECTION (A)(2) OF THIS SECTION.

30(c) This section may not be construed to affect any State law31WITH RESPECT TO A FRAUDULENT TRANSFER BY AN INDIVIDUAL TO A TRUSTEE.

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1 **14.5–1004.**

THE PROVISIONS OF THIS TITLE GOVERNING THE LEGAL EFFECT, VALIDITY, OR ENFORCEABILITY OF ELECTRONIC RECORDS OR ELECTRONIC SIGNATURES, AND OF CONTRACTS FORMED OR PERFORMED WITH THE USE OF THOSE RECORDS OR SIGNATURES, CONFORM TO THE REQUIREMENTS OF § 102 OF THE ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT (15 U.S.C. § 7002) AND SUPERSEDE, MODIFY, AND LIMIT THE REQUIREMENTS OF THE ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.

9 **14.5–1005.**

10 IF A PROVISION OF THIS TITLE OR THE APPLICATION OF A PROVISION TO 11 A PERSON OR CIRCUMSTANCES IS HELD INVALID, THE INVALIDITY DOES NOT 12 AFFECT OTHER PROVISIONS OR APPLICATIONS OF THIS TITLE WHICH CAN BE 13 GIVEN EFFECT WITHOUT THE INVALID PROVISION OR APPLICATION, AND TO 14 THIS END THE PROVISIONS OF THIS TITLE ARE SEVERABLE.

- 15 **14.5–1006.**
- 16 (A) EXCEPT AS OTHERWISE PROVIDED IN THIS TITLE:
- 17(1) THIS TITLE APPLIES TO ALL TRUSTS CREATED BEFORE, ON,18OR AFTER OCTOBER 1, 2014 JANUARY 1, 2015;

19 (2) THIS TITLE APPLIES TO ALL JUDICIAL PROCEEDINGS
 20 CONCERNING TRUSTS COMMENCED ON OR AFTER OCTOBER 1, 2014 JANUARY 1,
 21 2015;

(3) THIS TITLE DOES NOT APPLY TO JUDICIAL PROCEEDINGS
 CONCERNING TRUSTS COMMENCED BEFORE OCTOBER 1, 2014 JANUARY 1,
 24 2015;

(4) A RULE OF CONSTRUCTION OR PRESUMPTION PROVIDED IN
 THIS TITLE APPLIES TO TRUST INSTRUMENTS EXECUTED BEFORE OCTOBER 1,
 27 2014 JANUARY 1, 2015, UNLESS THERE IS A CLEAR INDICATION OF A CONTRARY
 INTENT IN THE TERMS OF THE TRUST; AND

29 (5) AN ACT DONE BEFORE OCTOBER 1, 2014 JANUARY 1, 2015, IS 30 NOT AFFECTED BY THIS TITLE.

31(B)IF A RIGHT IS ACQUIRED, EXTINGUISHED, OR BARRED ON THE32EXPIRATION OF A PRESCRIBED PERIOD THAT HAS COMMENCED TO RUN UNDER33ANOTHER STATUTE BEFOREOctober 1, 2014JANUARY 1, 2015, THAT

STATUTE CONTINUES TO APPLY TO THE RIGHT EVEN IF THE STATUTE HAS BEEN REPEALED OR SUPERSEDED.

3

Article – Financial Institutions

4 3–506.

5 (b) To the extent that a fund plan does not provide otherwise as to the 6 determination, allocation, and apportionment of principal and income, the principles of 7 [Title 14] **TITLES 14 AND 14.5** of the Estates and Trusts Article apply.

8 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
 9 October 1, 2014 January 1, 2015.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.