



GOV. MSG. NO. 1132

EXECUTIVE CHAMBERS
HONOLULU

DAVID Y. IGE
GOVERNOR

June 7, 2021

The Honorable Ronald D. Kouchi,
President
and Members of the Senate
Thirty First State Legislature
State Capitol, Room 409
Honolulu, Hawai'i 96813

The Honorable Scott K. Saiki,
Speaker and Members of the
House of Representatives
Thirty First State Legislature
State Capitol, Room 431
Honolulu, Hawai'i 96813

Dear President Kouchi, Speaker Saiki, and Members of the Legislature:

This is to inform you that on June 7, 2021, the following bill was signed into law:

SB0385 SD1 HD2 CD1

RELATING TO THE UNIFORM TRUST CODE.
ACT 032 (21)

Sincerely,

DAVID Y. IGE
Governor, State of Hawai'i

A BILL FOR AN ACT

RELATING TO THE UNIFORM TRUST CODE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that the Uniform Trust
2 Code is a national codification of the law of trusts, which
3 provides for greater clarity and uniformity in trust law and
4 interpretation. While there are currently a number of Hawaii
5 statutes relating to trusts, the Uniform Trust Code serves to
6 update these laws and to bring them under one comprehensive
7 umbrella.

8 The legislature further finds that the Uniform Trust Code
9 will significantly reduce the time, complexity, and expense of
10 trust proceedings and, in certain instances, allow for
11 nonjudicial resolution of trust issues that currently require
12 court intervention. At the same time, the Uniform Trust Code
13 provides ready access to a judge if either a dispute arises
14 during the course of trust administration or the interested
15 parties desire judicial supervision. The Uniform Trust Code
16 also provides greater clarity and certainty in many areas of
17 trust law that are exceedingly thin or without precedent in
18 Hawaii.



1 The purpose of this Act is to enact the Uniform Trust Code
2 (2018 version) in the State, with appropriate amendments to
3 reflect Hawaii law and practice where relevant.

4 SECTION 2. The Hawaii Revised Statutes is amended by
5 adding a new chapter to be appropriately designated and to read
6 as follows:

7 "CHAPTER

8 UNIFORM TRUST CODE

9 PART I. GENERAL PROVISIONS AND DEFINITIONS

10 § -101 Short title. This chapter may be cited as the
11 Uniform Trust Code.

12 § -102 Scope. This chapter applies to express trusts,
13 charitable or noncharitable, and trusts created pursuant to a
14 statute, judgment, or decree that requires the trust to be
15 administered in the manner of an express trust.

16 § -103 Definitions. As used in this chapter:

17 "Action", with respect to an act of a trustee, includes a
18 failure to act.

19 "Ascertainable standard" means a standard relating to an
20 individual's health, education, support, or maintenance within
21 the meaning of section 2041(b)(1)(A) or 2514(c)(1) of the



1 Internal Revenue Code of 1986, as in effect on the effective
2 date of this chapter.

3 "Beneficiary" means a person who:

4 (1) Has a present or future beneficial interest in a
5 trust, vested or contingent; or

6 (2) In a capacity other than that of trustee, holds a
7 power of appointment over trust property.

8 "Charitable trust" means a trust, or portion of a trust,
9 created for a charitable purpose described in section -405(a).

10 "Conservator" means a person appointed by the court to
11 administer the estate of a minor or adult individual.

12 "Court" means the circuit court in this State having
13 jurisdiction over all subject matter relating to trusts.

14 "Environmental law" means a federal, state, or local law,
15 rule, regulation, or ordinance relating to protection of the
16 environment.

17 "Guardian" means a person appointed by the court, a parent,
18 or a spouse to make decisions regarding the support, care,
19 education, health, and welfare of a minor or adult individual.

20 "Guardian" does not include a guardian ad litem.



1 "Incapacitated" means an individual who, for reasons other
2 than age, is unable to manage property and business affairs
3 effectively because of an impairment in the ability to receive
4 and evaluate information or to make or communicate decisions,
5 even with the use of appropriate and reasonably available
6 technological assistance or because of another physical, mental,
7 or health impairment, or because the individual is missing,
8 detained, or unable to return to the United States.

9 "Interested persons" includes beneficiaries and any others
10 having a property right in or claim against a trust estate that
11 may be affected by a judicial proceeding and fiduciaries and
12 other persons representing interested persons. The meaning as
13 it relates to particular persons may vary from time to time and
14 shall be determined according to the particular purposes of, and
15 matter involved in, any proceeding.

16 "Interests of the beneficiaries" means the beneficial
17 interests provided in the terms of the trust.

18 "Jurisdiction", with respect to a geographic area, includes
19 a state or country.

20 "Person" means an individual; corporation; business trust;
21 estate; trust; partnership; limited liability company;



1 association; joint venture; government; governmental
2 subdivision, agency, or instrumentality; public corporation; or
3 any other legal or commercial entity.

4 "Power of withdrawal" means a presently exercisable general
5 power of appointment other than a power:

6 (1) Exercisable by a trustee and limited by an
7 ascertainable standard; or

8 (2) Exercisable by another person only upon consent of the
9 trustee or a person holding an adverse interest.

10 "Property" means anything that may be the subject of
11 ownership, whether real or personal, legal or equitable, or any
12 interest therein.

13 "Qualified beneficiary" means a beneficiary who, on the
14 date the beneficiary's qualification is determined:

15 (1) Is a distributee or permissible distributee of trust
16 income or principal;

17 (2) Would be a distributee or permissible distributee of
18 trust income or principal if the interests of the
19 distributees described in paragraph (1) terminated on
20 that date without causing the trust to terminate; or



1 (3) Would be a distributee or permissible distributee of
2 trust income or principal if the trust terminated on
3 that date.

4 "Revocable", as applied to a trust, means revocable by the
5 settlor without the consent of the trustee or a person holding
6 an adverse interest.

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

13 "Spendthrift provision" means a term of a trust that
14 restrains both voluntary and involuntary transfer of a
15 beneficiary's interest.

16 "Spouse" includes individuals who are married to each other
17 and individuals who are reciprocal beneficiaries.

18 "State" means a state of the United States, the District of
19 Columbia, Puerto Rico, the United States Virgin Islands, or any
20 territory or insular possession subject to the jurisdiction of



1 the United States. "State" includes an Indian tribe or band
2 recognized by federal law or formally acknowledged by a state.

3 "Terms of a trust" means:

4 (1) Except as otherwise provided in paragraph (2), the
5 manifestation of the settlor's intent regarding a
6 trust's provisions as:

7 (A) Expressed in the trust instrument; or

8 (B) Established by other evidence that would be
9 admissible in a judicial proceeding; or

10 (2) The trust's provisions, as established, determined, or
11 amended by:

12 (A) A trustee or other person in accordance with
13 applicable law;

14 (B) A court order; or

15 (C) A nonjudicial settlement agreement under
16 section -111.

17 "Trust instrument" means an instrument executed by the
18 settlor that contains terms of the trust, including any
19 amendments thereto.

20 "Trustee" includes an original, additional, and successor
21 trustee, and a cotrustee.



1 § -104 **Knowledge.** (a) Subject to subsection (b), a
2 person has knowledge of a fact if the person:

3 (1) Has actual knowledge of it;

4 (2) Has received a notice or notification of it; or

5 (3) From all the facts and circumstances known to the
6 person at the time in question, has reason to know it.

7 (b) An organization that conducts activities through
8 employees has notice or knowledge of a fact involving a trust
9 only from the time the information was received by an employee
10 having responsibility to act for the trust, or would have been
11 brought to the employee's attention if the organization had
12 exercised reasonable diligence. An organization exercises
13 reasonable diligence if it maintains reasonable routines for
14 communicating significant information to the employee having
15 responsibility to act for the trust and there is reasonable
16 compliance with the routines. Reasonable diligence does not
17 require an employee of the organization to communicate
18 information unless the communication is part of the individual's
19 regular duties or the individual knows a matter involving the
20 trust would be materially affected by the information.



1 § -105 Default and mandatory rules. (a) Except as
2 otherwise provided in the terms of the trust, this chapter
3 governs the duties and powers of a trustee, relations among
4 trustees, and the rights and interests of a beneficiary.

5 (b) The terms of a trust prevail over any provision of
6 this chapter except:

7 (1) The requirements for creating a trust;

8 (2) The duty of a trustee to act in good faith and in
9 accordance with the terms and purposes of the trust
10 and the interests of the beneficiaries;

11 (3) The requirement that a trust and its terms be for the
12 benefit of its beneficiaries as their interests are
13 defined by the terms of the trust and that the trust
14 have a purpose that is lawful, not contrary to public
15 policy, and possible to achieve;

16 (4) The power of the court to modify or terminate a trust
17 under sections -410 through -416;

18 (5) The effect of a spendthrift provision and the rights
19 of certain creditors and assignees to reach a trust as
20 provided in part V;



- 1 (6) The power of the court under section -702 to
2 require, dispense with, or modify or terminate a bond;
3 (7) The power of the court under section -708(b) to
4 adjust a trustee's compensation, specified in the
5 terms of the trust, that is unreasonably low or high;
6 (8) The duty under section -813(c)(2) and (3) to notify
7 qualified beneficiaries of an irrevocable trust of the
8 existence of the trust, of the identity of the
9 trustee, and of their right to request trustee
10 reports;
11 (9) The duty under section -813(b) to respond to the
12 request of a qualified beneficiary of an irrevocable
13 trust for trustee reports and other information
14 reasonably related to the administration of a trust;
15 (10) The effect of an exculpatory term under
16 section -1008;
17 (11) The rights under sections -1010 through -1013 of
18 a person other than a trustee or beneficiary;
19 (12) Periods of limitation for commencing a judicial
20 proceeding;



1 (13) The power of the court to take action and exercise
2 jurisdiction as may be necessary in the interests of
3 justice; and

4 (14) The subject matter jurisdiction of the court and venue
5 for commencing a proceeding, as provided in
6 sections -203 and -204.

7 § -106 Common law of trusts; principles of equity. The
8 common law of trusts and principles of equity supplement this
9 chapter, except to the extent modified by this chapter or
10 another law of this State.

11 § -107 Governing law. The meaning and effect of the
12 terms of a trust are determined by:

13 (1) The law of the jurisdiction designated in the terms
14 unless the designation of that jurisdiction's law is
15 contrary to a strong public policy of the jurisdiction
16 having the most significant relationship to the matter
17 at issue; or

18 (2) In the absence of a controlling designation in the
19 terms of the trust, the law of the jurisdiction having
20 the most significant relationship to the matter at
21 issue.



1 **§ -108 Principal place of administration.** (a) Without
2 precluding other means for establishing a sufficient connection
3 with the designated jurisdiction, terms of a trust designating
4 the principal place of administration are valid and controlling
5 if:

6 (1) A trustee's principal place of business is located in
7 or a trustee is a resident of the designated
8 jurisdiction; or

9 (2) All or part of the administration occurs in the
10 designated jurisdiction.

11 (b) A trustee is under a continuing duty to administer the
12 trust at a place appropriate to its purposes, its
13 administration, and the interests of the beneficiaries.

14 (c) Without precluding the right of the court to order,
15 approve, or disapprove a transfer, the trustee, in furtherance
16 of the duty prescribed by subsection (b), may transfer the
17 trust's principal place of administration to another state or to
18 a jurisdiction outside of the United States.

19 (d) The trustee shall notify the qualified beneficiaries
20 of a proposed transfer of a trust's principal place of



1 administration no less than sixty days before initiating the
2 transfer. The notice of proposed transfer shall include:

3 (1) The name of the jurisdiction to which the principal
4 place of administration is to be transferred;

5 (2) The address and telephone number at the new location
6 at which the trustee can be contacted;

7 (3) An explanation of the reasons for the proposed
8 transfer;

9 (4) The date on which the proposed transfer is anticipated
10 to occur; and

11 (5) The date, no less than sixty days after the giving of
12 the notice, by which the qualified beneficiary shall
13 notify the trustee of an objection to the proposed
14 transfer.

15 (e) The authority of a trustee under this section to
16 transfer a trust's principal place of administration terminates
17 if a qualified beneficiary notifies the trustee of an objection
18 to the proposed transfer on or before the date specified in the
19 notice.

20 (f) In connection with a transfer of the trust's principal
21 place of administration, the trustee may transfer some or all of



1 the trust property to a successor trustee designated in the
2 terms of the trust or appointed pursuant to section -704.

3 § -109 Methods and waiver of notice. (a) Notice to a
4 person under this chapter or the sending of a document to a
5 person under this chapter shall be accomplished in a manner
6 reasonably suitable under the circumstances and likely to result
7 in receipt of the notice or document. Permissible methods of
8 notice or for sending a document include first-class mail,
9 personal delivery, delivery to the person's last known place of
10 residence or place of business, or a properly directed
11 electronic message.

12 (b) Notice otherwise required under this chapter or a
13 document otherwise required to be sent under this chapter need
14 not be provided to a person whose identity or location is
15 unknown to and not reasonably ascertainable by the trustee.

16 (c) Notice under this chapter or the sending of a document
17 under this chapter may be waived by the person to be notified or
18 sent the document.

19 (d) Notice of a judicial proceeding shall be given as
20 provided in the Hawaii probate rules.



1 § -110 Others treated as qualified beneficiaries. (a)

2 A charitable organization expressly designated to receive
3 distributions under the terms of a charitable trust has the
4 rights of a qualified beneficiary under this chapter if the
5 charitable organization, on the date the charitable
6 organization's qualification is being determined:

7 (1) Is a distributee or permissible distributee of trust
8 income or principal;

9 (2) Would be a distributee or permissible distributee of
10 trust income or principal upon the termination of the
11 interests of other distributees or permissible
12 distributees then receiving or eligible to receive
13 distributions; or

14 (3) Would be a distributee or permissible distributee of
15 trust income or principal if the trust terminated on
16 that date.

17 (b) A person appointed to enforce a trust created for the
18 care of an animal or another noncharitable purpose, as provided
19 in section -408 or -409, has the rights of a qualified
20 beneficiary under this chapter.



1 (c) The attorney general of this State has the rights of a
2 qualified beneficiary with respect to a charitable trust having
3 its principal place of administration in this State.

4 § -111 Nonjudicial settlement agreements. (a) Except
5 as otherwise provided in subsection (b), interested persons may
6 enter into a binding nonjudicial settlement agreement with
7 respect to any matter involving a trust.

8 (b) A nonjudicial settlement agreement is valid only to
9 the extent it does not violate a material purpose of the trust
10 and includes terms and conditions that could be properly
11 approved by the court under this chapter or other applicable
12 law.

13 (c) Matters that may be resolved by a nonjudicial
14 settlement agreement include, but are not limited to:

- 15 (1) The interpretation or construction of the terms of the
16 trust;
17 (2) The approval of a trustee's report or accounting;
18 (3) Direction to a trustee to refrain from performing a
19 particular act or the grant to a trustee of any
20 necessary or desirable power;



1 (4) The resignation or appointment of a trustee and the
2 determination of a trustee's compensation;

3 (5) Transfer of a trust's principal place of
4 administration; and

5 (6) Liability of a trustee for an action relating to the
6 trust.

7 (d) Any interested person may request the court to approve
8 a nonjudicial settlement agreement, to determine whether the
9 representation as provided in part III was adequate, and to
10 determine whether the agreement contains terms and conditions
11 that the court could have properly approved.

12 (e) For purposes of this section, "interested person"
13 means a person whose consent would be required in order to
14 achieve a binding settlement were the settlement to be approved
15 by the court.

16 § -112 Rules of construction. The rules of construction
17 that apply in this State to the interpretation of and
18 disposition of property by will also apply, as appropriate, to
19 the interpretation of the terms of a trust and the disposition
20 of the trust property.



1 § -113 Insurable interest of trustee. (a) A trustee of
2 a trust has an insurable interest in the life of an individual
3 insured under a life insurance policy that is owned by the
4 trustee of the trust acting in a fiduciary capacity or that
5 designates the trust itself as the owner if, on the date the
6 policy is issued:

7 (1) The insured is:

8 (A) A settlor of the trust; or

9 (B) An individual in whom a settlor of the trust has,
10 or would have had if living when the policy was
11 issued, an insurable interest; and

12 (2) The life insurance proceeds are primarily for the
13 benefit of one or more trust beneficiaries who have an
14 insurable interest in the life of the insured.

15 (b) This section applies to any trust existing before, on,
16 or after the effective date of this section, regardless of the
17 effective date of the governing instrument under which the trust
18 was created, but only as to a life insurance policy that is in
19 force and for which an insured is alive on or after the
20 effective date of this section.



1 (c) As used in this section, "settlor" means a person that
2 executes a trust instrument. "Settlor" includes a person for
3 whom a fiduciary or agent is acting.

4 **PART II. JUDICIAL PROCEEDINGS**

5 **§ -201 Role of court in administration of trust. (a)**

6 The court may intervene in the administration of a trust to the
7 extent its jurisdiction is invoked by an interested person or as
8 provided by law.

9 (b) A trust is not subject to continuing judicial
10 supervision unless ordered by the court.

11 (c) A judicial proceeding involving a trust may relate to
12 any matter involving the internal affairs of trusts, including a
13 proceeding to:

- 14 (1) Appoint or remove a trustee;
15 (2) Review or determine a trustee's compensation;
16 (3) Review a trustee's report or accounting or compel a
17 trustee to report or account;
18 (4) Ascertain beneficiaries;
19 (5) Determine any question arising in the administration
20 or distribution of any trust, including questions of
21 construction of trust terms;



1 (6) Request instructions to trustees; and

2 (7) Determine the existence or nonexistence of any
3 immunity, power, privilege, duty, or right.

4 (d) A judicial proceeding is initiated by filing a
5 petition in the court and giving notice pursuant to
6 section -109 to interested persons. The court may order
7 notification to additional persons.

8 **§ -202 Jurisdiction over trustee and beneficiary. (a)**

9 By accepting the trusteeship of a trust having its principal
10 place of administration in this State or by moving the principal
11 place of administration to this State, the trustee submits
12 personally to the jurisdiction of the courts of this State
13 regarding any matter involving the trust.

14 (b) With respect to their interests in the trust, the
15 beneficiaries of a trust having its principal place of
16 administration in this State are subject to the jurisdiction of
17 the courts of this State regarding any matter involving the
18 trust.

19 (c) By accepting a distribution from such a trust, the
20 recipient submits personally to the jurisdiction of the courts
21 of this State regarding any matter involving the trust.



1 (d) By accepting the delegation of a trust function from
2 the trustee of a trust having its principal place of
3 administration in this State, the agent submits to the
4 jurisdiction of the courts of this State regarding any matter
5 involving the trust.

6 (e) This section does not preclude other methods of
7 obtaining jurisdiction over a trustee, beneficiary, or other
8 person receiving property from the trust.

9 § -203 Subject matter jurisdiction. (a) The court has
10 exclusive jurisdiction of proceedings in this State concerning
11 the administration of a trust.

12 (b) The court has concurrent jurisdiction with other
13 courts of this State of actions and proceedings involving a
14 trust, including:

- 15 (1) Proceedings to determine the existence or nonexistence
16 of trusts created other than by will;
17 (2) Actions by or against creditors or debtors of trusts;
18 and
19 (3) Other actions and proceedings involving trustees and
20 third parties.



1 § -204 Venue. (a) Except as otherwise provided in
2 subsection (b), venue for a judicial proceeding involving a
3 trust is in the judicial circuit of this State in which the
4 trust's principal place of administration is or will be located
5 and, if the trust is created by will and the estate is not yet
6 closed, in the judicial circuit in which the decedent's estate
7 is being administered.

8 (b) If a trust has no trustee, venue for a judicial
9 proceeding for the appointment of a trustee is in:

10 (1) A judicial circuit of this State in which a
11 beneficiary resides;

12 (2) A judicial circuit in which any trust property is
13 located;

14 (3) If the trust is created by will, the judicial circuit
15 in which the decedent's estate was or is being
16 administered; or

17 (4) The judicial circuit where the nominated trustee
18 resides or has its principal place of business.



PART III. REPRESENTATION

§ -301 Representation; basic effect. (a) Notice to a person who may represent and bind another person under this part has the same effect as if notice were given directly to the other person.

(b) The consent of a person who may represent and bind another person under this part is binding on the person represented unless the person represented objects to the representation before the consent would otherwise have become effective.

(c) Except as otherwise provided in sections -411 and -602, a person who under this part may represent a settlor who lacks capacity may receive notice and give a binding consent on the settlor's behalf.

(d) A settlor shall not represent and bind a beneficiary under this part with respect to the termination or modification of a trust under section -411(a).

§ -302 Representation by holder of power of appointment. To the extent there is no material conflict of interest between the holder of a power of appointment and the persons represented with respect to the particular question or dispute, the holder



1 may represent and bind persons whose interests, as permissible
2 appointees, takers in default, or otherwise, are subject to the
3 power.

4 § -303 Representation by fiduciaries and parents. To
5 the extent there is no conflict of interest between the
6 representative and the person represented or among those being
7 represented with respect to a particular question or dispute:

8 (1) A conservator may represent and bind the estate that
9 the conservator controls;

10 (2) A guardian may represent and bind the ward if a
11 conservator of the ward's estate has not been
12 appointed;

13 (3) An agent having authority to act with respect to the
14 particular question or dispute may represent and bind
15 the principal;

16 (4) A trustee may represent and bind the beneficiaries of
17 the trust;

18 (5) A personal representative of a decedent's estate may
19 represent and bind persons interested in the estate;

20 (6) A parent may represent and bind the parent's minor or
21 unborn child if a conservator or guardian for the



1 child has not been appointed. The parent entitled to
2 represent and bind the child is determined in the
3 following order of priority:

4 (A) The parent who is a lineal descendant of a
5 settlor;

6 (B) The parent who is a beneficiary of the trust that
7 is the subject of the representation;

8 (C) The parent with legal custody of the child; and

9 (D) If one parent cannot be determined pursuant to

10 the preceding criteria and if a disagreement

11 arises between the parties seeking to represent

12 the same child, a guardian ad litem shall be

13 appointed to represent the minor child; and

14 (7) A qualified beneficiary may represent and bind any

15 beneficiary who may succeed to the qualified

16 beneficiary's interest under the terms of the trust or

17 pursuant to the exercise of a power of appointment.

18 § -304 Representation by person having substantially
19 identical interest. Unless otherwise represented, a minor,
20 incapacitated, or unborn individual, or a person whose identity
21 or location is unknown and not reasonably ascertainable, may be



1 represented by and bound by another having a substantially
2 identical interest with respect to the particular question or
3 dispute, but only to the extent that there is no material
4 conflict of interest between the representative and the person
5 represented.

6 § -305 Appointment of guardian ad litem. (a) If the
7 court determines that an interest is not represented under this
8 part, or that the otherwise available representation might be
9 inadequate, the court may appoint a guardian ad litem to receive
10 notice, give consent, and otherwise represent, bind, and act on
11 behalf of a minor, incapacitated, or unborn individual, or a
12 person whose identity or location is unknown. A guardian ad
13 litem may be appointed to represent several persons or
14 interests.

15 (b) A guardian ad litem may act on behalf of the
16 individual represented with respect to any matter arising under
17 this chapter, regardless of whether a judicial proceeding
18 concerning the trust is pending.

19 (c) In making decisions, a guardian ad litem may consider
20 general benefits accruing to the living members of the
21 individual's family.



PART IV. CREATION, VALIDITY, MODIFICATION, AND TERMINATION OF TRUST

§ -401 Methods of creating trust. A trust may be created by:

- (1) Transfer of property to another person as trustee during the settlor's lifetime or by will or other disposition taking effect upon the settlor's death;
- (2) Declaration by the owner of property that the owner holds identifiable property as trustee;
- (3) Exercise of a power of appointment in favor of a trustee; or
- (4) A court pursuant to its statutory or equitable powers.

§ -402 Requirements for creation. (a) A trust is created only if:

- (1) The settlor has capacity to create a trust;
- (2) The settlor indicates an intention to create the trust;
- (3) The trust has a definite beneficiary or is:
 - (A) A charitable trust;
 - (B) A trust for the care of an animal, as provided in section -408; or

1 (C) A trust for a noncharitable purpose, as provided
2 in section -409; and

3 (4) The trustee has duties to perform.

4 (b) A beneficiary is definite if the beneficiary can be
5 ascertained now or in the future, subject to any applicable rule
6 against perpetuities.

7 (c) A power in a trustee, or in another person under the
8 terms of the trust, to select a beneficiary from an indefinite
9 class is valid. If the power is not exercised within a
10 reasonable time, the power fails and the property subject to the
11 power passes to the persons who would have taken the property
12 had the power not been conferred.

13 (d) Notwithstanding subsection (a)(1), a trust created by
14 an agent under power of attorney is valid if:

15 (1) The trust is created by an agent of the settlor under
16 a power of attorney that specifically authorizes the
17 creation of a trust; and

18 (2) The settlor had capacity to create a trust when the
19 power of attorney was executed.

20 § -403 **Trusts created in other jurisdictions.** A trust
21 not created by will is validly created if its creation complies



1 with the law of the jurisdiction in which the trust instrument
2 was executed, or the law of the jurisdiction in which, at the
3 time of creation:

4 (1) The settlor was domiciled, had a place of abode, or
5 was a national;

6 (2) A trustee was domiciled or had a place of business; or

7 (3) Any trust property was located.

8 Unless otherwise provided in the trust instrument, this
9 section shall also apply to trust amendments.

10 § -404 Trust purposes. A trust may be created only to
11 the extent its purposes are lawful, not contrary to public
12 policy, and possible to achieve. A trust and its terms shall be
13 for the benefit of its beneficiaries, subject to the provisions
14 of the trust.

15 § -405 Charitable purposes; enforcement. (a) A
16 charitable trust may be created for the relief of poverty, the
17 advancement of education or religion, the promotion of health,
18 governmental or municipal purposes, or other purposes the
19 achievement of which is beneficial to the community.

20 (b) If the terms of a charitable trust do not indicate or
21 otherwise provide for selection of a particular charitable



1 purpose or beneficiary, the trustee or other person authorized
2 by the terms of the trust or, if none, the court may select one
3 or more charitable purposes or beneficiaries. The selection
4 shall be consistent with the settlor's intention to the extent
5 it can be ascertained.

6 (c) The settlor of a charitable trust, the trustee, a
7 designated beneficiary, if any, or the attorney general may
8 maintain a proceeding to enforce the trust.

9 § -406 Creation of trust induced by fraud, duress, or
10 undue influence. A trust is void to the extent its creation was
11 induced by fraud, duress, or undue influence.

12 § -407 Evidence of oral trust. (a) Except as required
13 by law other than this chapter, a trust need not be evidenced by
14 a trust instrument, but the creation of an oral trust and its
15 terms, including any amendments thereto, may be established only
16 by clear and convincing evidence.

17 (b) Except as required by law other than this chapter, a
18 trust need not be evidenced by a trust instrument, but the
19 establishment of a missing trust and its terms may be
20 established by clear and convincing evidence. In the absence of
21 clear and convincing evidence to establish the existence or



1 terms and provisions of a missing trust, the existence of or the
2 terms and provisions of a missing trust may be established by
3 court order; provided that, in the circumstances and upon
4 appropriate notice, it would be fair and equitable to do so.
5 This section does not preclude a court from ordering relief
6 otherwise allowed by law.

7 **§ -408 Trust for care of animal.** (a) A trust for the
8 care of one or more designated domestic or pet animals shall be
9 valid. The trust terminates when no living animal is covered by
10 the trust. A governing instrument shall be liberally construed
11 to bring the transfer within this section, to presume against
12 the precatory or honorary nature of its disposition, and to
13 carry out the general intent of the transferor. Extrinsic
14 evidence shall be admissible in determining the transferor's
15 intent.

16 (b) A trust for the care of one or more designated
17 domestic or pet animals shall be subject to the following
18 provisions:

19 (1) Except as expressly provided otherwise in the
20 instrument creating the trust, and notwithstanding
21 section -816, no portion of the principal or income



1 of the trust may be converted to the use of the
2 trustee or to a use contrary to the trust's purposes
3 or for the benefit of a covered animal;

4 (2) Upon termination, the trustee shall transfer the
5 unexpended trust property in the following order:

6 (A) As directed in the trust instrument;

7 (B) If there is no direction in the trust instrument
8 and if the trust was created in a non-residuary
9 clause in the transferor's will, then under the
10 residuary clause in the transferor's will; and

11 (C) If no taker is produced by the application of
12 subparagraph (A) or (B), then to the transferor's
13 heirs, determined according to section 560:2-711;

14 (3) A trust authorized by this section may be enforced by
15 a person appointed in the terms of the trust or, if no
16 person is so appointed, by a person appointed by the
17 court. A person having an interest in the welfare of
18 the animal may request the court to appoint a person
19 to enforce the trust or to remove a person appointed;

20 (4) Except as ordered by the court or required by the
21 trust instrument, no filing, report, registration,



1 periodic accounting, separate maintenance of funds,
2 appointment, or fee shall be required by reason of the
3 existence of the fiduciary relationship of the
4 trustee;

5 (5) The court may reduce the amount of the property
6 transferred if it determines that the amount
7 substantially exceeds the amount required for the
8 intended use and the court finds that there will be no
9 substantial adverse impact in the care, maintenance,
10 health, or appearance of the designated domestic or
11 pet animal; provided that the amount of the reduction,
12 if any, shall pass as unexpended trust property under
13 paragraph (2);

14 (6) If a trustee is not designated or no designated
15 trustee is willing and able to serve, the court shall
16 name a trustee. The court may order the transfer of
17 the property to another trustee if the transfer is
18 necessary to ensure that the intended use is carried
19 out and if a successor is not designated in the trust
20 instrument or if no designated successor trustee
21 agrees to serve and is able to serve. The court may



1 also make other orders and determinations as are
2 advisable to carry out the intent of the transferor
3 and the purpose of this section; and

4 (7) The trust is exempt from the operation of chapter 525,
5 the Uniform Statutory Rule Against Perpetuities.

6 § -409 **Noncharitable trust without ascertainable**
7 **beneficiary.** Except as otherwise provided in section -408 or
8 by other law, the following rules apply:

9 (1) A trust may be created for a noncharitable purpose
10 without a definite or definitely ascertainable
11 beneficiary or for a noncharitable but otherwise valid
12 purpose to be selected by the trustee;

13 (2) A trust authorized by this section may be enforced by
14 a person appointed in the terms of the trust or, if no
15 person is so appointed, by a person appointed by the
16 court; and

17 (3) Property of a trust authorized by this section may be
18 applied only to its intended use, except to the extent
19 the court determines that the value of the trust
20 property exceeds the amount required for the intended
21 use; provided that, except as otherwise provided in



1 the terms of the trust, property not required for the
2 intended use shall be distributed to the settlor, if
3 then living; otherwise pursuant to the terms of the
4 settlor's will; or, if none, to the settlor's
5 successors in interest.

6 **§ -410 Modification or termination of trust; proceedings**
7 **for approval or disapproval.** (a) In addition to the methods of
8 termination prescribed by sections -411 through -414, a
9 trust terminates to the extent the trust is revoked or expires
10 pursuant to its terms, no purpose of the trust remains to be
11 achieved, or the purposes of the trust have become unlawful,
12 contrary to public policy, or impossible to achieve.

13 (b) A proceeding to approve or disapprove a proposed
14 modification or termination under sections -411
15 through -416, or trust combination or division under
16 section -417, may be commenced by a trustee or beneficiary,
17 and a proceeding to approve or disapprove a proposed
18 modification or termination under section -411 may be
19 commenced by the settlor. The settlor of a charitable trust may
20 maintain a proceeding to modify the trust under section -413.



1 § -411 Modification or termination of noncharitable
2 irrevocable trust by consent. (a) A noncharitable irrevocable
3 trust may be modified or terminated upon consent of the settlor
4 and all beneficiaries, even if the modification or termination
5 is inconsistent with a material purpose of the trust. A
6 settlor's power to consent to a trust's modification or
7 termination may be exercised by:

8 (1) An agent under a power of attorney only to the extent
9 expressly authorized by the power of attorney or the
10 terms of the trust;

11 (2) The settlor's conservator with the approval of the
12 court supervising the conservatorship if an agent is
13 not so authorized; or

14 (3) The settlor's guardian with the approval of the court
15 supervising the guardianship if an agent is not so
16 authorized and a conservator has not been appointed.

17 This subsection does not apply to irrevocable trusts created
18 before or to revocable trusts that become irrevocable before the
19 effective date of this chapter.

20 (b) A noncharitable irrevocable trust may be terminated
21 upon consent of all of the beneficiaries if the court concludes



1 that continuance of the trust is not necessary to achieve any
2 material purpose of the trust. A noncharitable irrevocable
3 trust may be modified upon consent of all of the beneficiaries
4 if the court concludes that modification is not inconsistent
5 with a material purpose of the trust.

6 (c) It is a question of fact whether a spendthrift
7 provision constitutes a material purpose of the trust.

8 (d) Upon termination of a trust under subsection (a) or
9 (b), the trustee shall distribute the trust property as agreed
10 to by the beneficiaries.

11 (e) If not all of the beneficiaries consent to a proposed
12 modification or termination of the trust under subsection (a) or
13 (b), the modification or termination may be approved by the
14 court if the court is satisfied that:

15 (1) If all of the beneficiaries had consented, the trust
16 could have been modified or terminated under this
17 section; and

18 (2) The interests of a beneficiary who does not consent
19 will be adequately protected.

20 § -412 Modification or termination because of
21 unanticipated circumstances or inability to administer trust



1 **effectively.** (a) The court may modify the administrative or
2 dispositive terms of a trust or terminate the trust if, because
3 of circumstances not anticipated by the settlor, modification or
4 termination will further the purposes of the trust. To the
5 extent practicable, the modification shall be made in accordance
6 with the settlor's probable intention.

7 (b) The court may modify the administrative terms of a
8 trust if continuation of the trust on its existing terms would
9 be impracticable or wasteful or impair the trust's
10 administration.

11 (c) Upon termination of a trust under this section, the
12 trustee shall distribute the trust property in a manner
13 consistent with the purposes of the trust.

14 § -413 **Cy pres.** (a) Except as otherwise provided in
15 subsection (b), if a particular charitable purpose becomes
16 unlawful, impracticable, impossible to achieve, or wasteful:

17 (1) The trust does not fail, in whole or in part;

18 (2) The trust property does not revert to the settlor or
19 the settlor's successors in interest; and

20 (3) The court may apply cy pres to modify or terminate the
21 trust by directing that the trust property be applied



1 or distributed, in whole or in part, in a manner
2 consistent with the settlor's charitable purposes.

3 (b) Subsection (a) shall not apply if the document
4 creating the charitable interest expressly provides for an
5 alternate disposition of the charitable interest if the
6 charitable purpose becomes unlawful, impracticable, impossible
7 to achieve, or wasteful. A general residuary disposition by
8 trust shall not be considered an express provision for an
9 alternate disposition. In addition, if the alternative plan is
10 also a charitable trust and that trust fails, the intention
11 shown in the original plan shall prevail in the application of
12 this section.

13 (c) In every cy pres proceeding, the attorney general
14 shall be notified and given an opportunity to be heard.

15 **§ -414 Modification or termination of uneconomic trust.**

16 (a) After notice to the qualified beneficiaries, the trustee of
17 a trust consisting of trust property having a total value of
18 less than \$100,000 may terminate the trust if the trustee
19 concludes that the value of the trust property is insufficient
20 to justify the cost of administration.



1 (b) The court may modify or terminate a trust or remove
2 the trustee and appoint a different trustee if it determines
3 that the value of the trust property is insufficient to justify
4 the cost of administration.

5 (c) Upon termination of a trust under this section, the
6 trustee shall distribute the trust property in a manner
7 consistent with the purposes of the trust.

8 (d) This section shall not apply to an easement for
9 conservation or preservation.

10 **§ -415 Reformation to correct mistakes.** The court may
11 reform the terms of a trust, even if unambiguous, to conform the
12 terms to the settlor's intention if it is proved by clear and
13 convincing evidence what the settlor's intention was and that
14 the terms of the trust were affected by a mistake of fact or
15 law, whether in expression or inducement.

16 **§ -416 Modification to achieve settlor's tax objectives.**
17 To achieve the settlor's tax objectives, the court may modify
18 the terms of a trust in a manner that is not contrary to the
19 settlor's probable intention. The court may provide that the
20 modification has retroactive effect.



1 **§ -417 Combination and division of trusts.** After notice
2 to the qualified beneficiaries, a trustee may combine two or
3 more trusts into a single trust or divide a trust into two or
4 more separate trusts, if the result does not impair rights of
5 any beneficiary or adversely affect achievement of the purposes
6 of the trust. Two or more trusts may be combined into a single
7 trust if the interests of each beneficiary in the trust
8 resulting from the combination are substantially the same as the
9 combined interests of the beneficiary in the trusts before the
10 combination. The terms of each new trust created by a division
11 under this section shall provide, in the aggregate, for the same
12 succession of interests and beneficiaries as are provided in the
13 original trust.

14 **PART V. CREDITOR'S CLAIMS; SPENDTHRIFT AND DISCRETIONARY TRUSTS**

15 **§ -501 Rights of beneficiary's creditor or assignee.** To
16 the extent a beneficiary's interest is not subject to a
17 spendthrift provision, the court may authorize a creditor or
18 assignee of the beneficiary to reach the beneficiary's interest
19 by attachment of present or future distributions to or for the
20 benefit of the beneficiary or other means. The court may limit
21 the award to relief as is appropriate under the circumstances.



1 § -502 Spendthrift provision. (a) A spendthrift
2 provision is valid only if it restrains both voluntary and
3 involuntary transfer of a beneficiary's interest.

4 (b) A term of a trust providing that the interest of a
5 beneficiary is held subject to a "spendthrift trust", or words
6 of similar import, is sufficient to restrain both voluntary and
7 involuntary transfer of the beneficiary's interest.

8 (c) A beneficiary shall not transfer an interest in a
9 trust in violation of a valid spendthrift provision and, except
10 as otherwise provided in this part, a creditor or assignee of
11 the beneficiary shall not reach the interest or a distribution
12 by the trustee before its receipt by the beneficiary.

13 § -503 Exceptions to spendthrift provision. (a) A
14 spendthrift provision is unenforceable against:

15 (1) A beneficiary's child who has a judgment or court
16 order against the beneficiary for support or
17 maintenance; and

18 (2) A claim of this State or the United States to the
19 extent a law of this State or federal law so provides.

20 (b) A claimant against which a spendthrift provision
21 cannot be enforced may obtain from a court an order attaching



1 present or future distributions to or for the benefit of the
2 beneficiary. The court may limit the award to relief as is
3 appropriate under the circumstances.

4 § -504 Discretionary trusts; effect of standard. (a)

5 Except as otherwise provided in subsection (b), regardless of
6 whether a trust contains a spendthrift provision, a creditor of
7 a beneficiary shall not compel a distribution that is subject to
8 the trustee's discretion, even if:

9 (1) The discretion is expressed in the form of a standard
10 of distribution; or

11 (2) The trustee has abused the discretion.

12 (b) To the extent a trustee has not complied with a
13 standard of distribution or has abused a discretion:

14 (1) A distribution may be ordered by the court to satisfy
15 a judgment or court order against the beneficiary for
16 support or maintenance of the beneficiary's child; and

17 (2) The court shall direct the trustee to pay to or for
18 the benefit of the beneficiary's child, an amount as
19 is equitable under the circumstances but no more than
20 the amount the trustee would have been required to
21 distribute to or for the benefit of the beneficiary



1 had the trustee complied with the standard or not
2 abused the discretion.

3 (c) This section shall not limit the right of a
4 beneficiary to maintain a judicial proceeding against a trustee
5 for an abuse of discretion or failure to comply with a standard
6 for distribution.

7 (d) If the trustee's or cotrustee's discretion to make
8 distributions for the trustee's or cotrustee's own benefit is
9 limited by an ascertainable standard, a creditor shall not reach
10 or compel distribution of the beneficial interest except to the
11 extent the interest would be subject to the creditor's claim
12 were the beneficiary not acting as trustee or cotrustee.

13 § -505 Creditor's claim against settlor. (a)
14 Regardless of whether the terms of a trust contain a spendthrift
15 provision, the following rules shall apply:

16 (1) During the lifetime of the settlor, the property of a
17 revocable trust is subject to claims of the settlor's
18 creditors;

19 (2) Except as provided in chapter 554G, with respect to an
20 irrevocable trust, a creditor or assignee of the
21 settlor may reach the maximum amount that can be



1 distributed to or for the settlor's benefit. If a
2 trust has more than one settlor, the amount the
3 creditor or assignee of a particular settlor may reach
4 shall not exceed the settlor's interest in the portion
5 of the trust attributable to that settlor's
6 contribution; and

7 (3) After the death of a settlor, and subject to the
8 settlor's right to direct the source from which
9 liabilities will be paid, the property of a trust that
10 was revocable at the settlor's death is subject to
11 claims of the settlor's creditors, costs of
12 administration of the settlor's estate, the expenses
13 of the settlor's funeral and disposal of remains, and
14 statutory allowances to a surviving spouse or
15 reciprocal beneficiary and children to the extent the
16 settlor's probate estate is inadequate to satisfy
17 those claims, costs, expenses, and allowances.

18 (b) For purposes of this section:

19 (1) During the period the power may be exercised, the
20 holder of a power of withdrawal is treated in the same



1 manner as the settlor of a revocable trust to the
2 extent of the property subject to the power; and

3 (2) Upon the lapse, release, or waiver of the power, the
4 holder is treated as the settlor of the trust only to
5 the extent the value of the property affected by the
6 lapse, release, or waiver exceeds the greater of the
7 amount specified in section 2041(b)(2) or 2514(e) of
8 the Internal Revenue Code of 1986, as amended, or
9 section 2503(b) of the Internal Revenue Code of 1986,
10 as amended, in each case as in effect on the effective
11 date of this chapter.

12 (c) This section shall not apply to trusts created under
13 chapter 554G.

14 § -506 Overdue distribution. (a) Regardless of whether
15 a trust contains a spendthrift provision, a creditor or assignee
16 of a beneficiary may reach a mandatory distribution of income or
17 principal, including a distribution upon termination of the
18 trust, if the trustee has not made the distribution to the
19 beneficiary within a reasonable time after the designated
20 distribution date.



1 (b) As used in this section, "mandatory distribution"
2 means a distribution of income or principal that the trustee is
3 required to make to a beneficiary under the terms of the trust,
4 including a distribution upon termination of the trust.
5 "Mandatory distribution" does not include a distribution subject
6 to the exercise of the trustee's discretion even if:

7 (1) The discretion is expressed in the form of a standard
8 of distribution; or

9 (2) The terms of the trust authorizing a distribution
10 couple language of discretion with language of
11 direction.

12 § -507 **Personal obligations of trustee.** Trust property
13 is not subject to personal obligations of the trustee, even if
14 the trustee becomes insolvent or bankrupt.

15 **PART VI. REVOCABLE TRUSTS**

16 § -601 **Capacity of settlor of revocable trust.** The
17 capacity required to create or add property to a revocable trust
18 is the same as that required to make a will. Unless otherwise
19 altered by the terms of the trust pursuant to section -602(c),
20 the capacity required to amend, revoke, or direct the actions of



1 the trustee of a revocable trust is also the same as that
2 required to make a will.

3 § -602 Revocation or amendment of revocable trust. (a)

4 Unless the terms of a trust expressly provide that the trust is
5 irrevocable, the settlor may revoke or amend the trust. This
6 subsection shall not apply to a trust created under an
7 instrument executed before the effective date of this chapter.

8 (b) Unless the terms of a trust expressly provide
9 otherwise, if a revocable trust is created or funded by more
10 than one settlor:

11 (1) To the extent the trust consists of community
12 property, the trust may be revoked by either spouse
13 acting alone, but may be amended only by joint action
14 of both spouses;

15 (2) To the extent the trust consists of property other
16 than community property, each settlor may revoke or
17 amend the trust with regard to the portion of the
18 trust property attributable to that settlor's
19 contribution; and

20 (3) Upon the revocation or amendment of the trust by fewer
21 than all of the settlors, the trustee shall promptly



1 notify the other settlors of the revocation or
2 amendment.

3 (c) The settlor may revoke or amend a revocable trust by
4 substantial compliance with a method provided in the terms of
5 the trust, including requiring a higher level of capacity to
6 amend or revoke, or, if the terms of the trust do not provide a
7 method of amendment or revocation, by any written and signed
8 method manifesting clear and convincing evidence of the
9 settlor's intent.

10 (d) Upon revocation of a revocable trust, the trustee
11 shall deliver the trust property as the settlor directs.

12 (e) A settlor's powers with respect to revocation,
13 amendment, or distribution of trust property may be exercised by
14 an agent under a power of attorney only to the extent expressly
15 authorized by the terms of the trust and the power.

16 (f) A conservator of the settlor may exercise a settlor's
17 powers with respect to revocation, amendment, or distribution of
18 trust property only with the approval of the court supervising
19 the conservatorship.

20 (g) A trustee who does not have actual knowledge that a
21 trust has been revoked or amended is not liable to the settlor



1 or settlor's successors in interest for distributions made and
2 other actions taken on the assumption that the trust had not
3 been amended or revoked.

4 **§ -603 Settlor's powers; powers of withdrawal. (a)**

5 While the settlor of a revocable trust is alive, rights of the
6 beneficiaries are subject to the control of the settlor, the
7 duties of the trustee are owed exclusively to the settlor, and
8 beneficiaries other than the settlor have no right to receive
9 notice, information, or reports under section -813.

10 (b) The rights of the beneficiaries with respect to
11 property that is subject to a power of withdrawal are subject to
12 the control of the holder of the power during the period that
13 the power may be exercised, and the duties of the trustee are
14 owed exclusively to the holder of a power of withdrawal with
15 respect to the property that is subject to the power.

16 **§ -604 Limitation on action contesting validity of**

17 **revocable trust; distribution of trust property. (a)** A person
18 may commence a judicial proceeding after the settlor's death to
19 contest the validity of a trust that was revocable at the
20 settlor's death within the earlier of:

21 (1) Five years after the settlor's death; or



1 (2) Ninety days after the trustee sent the person a copy
2 of the trust instrument and a notice informing the
3 person of the trust's existence, of the trustee's name
4 and address, and of the time allowed for commencing a
5 proceeding.

6 (b) Upon the death of the settlor of a trust that was
7 revocable at the settlor's death, the trustee may proceed to
8 distribute the trust property in accordance with the terms of
9 the trust. The trustee shall not be subject to liability for
10 doing so unless:

11 (1) The trustee has actual knowledge of a pending judicial
12 proceeding contesting the validity of the trust; or

13 (2) A potential contestant has notified the trustee of a
14 possible judicial proceeding to contest the trust and
15 a judicial proceeding is commenced within sixty days
16 after the contestant sent the notification.

17 (c) A beneficiary of a trust that is determined to have
18 been invalid is liable to return any distribution received.

19 **PART VII. OFFICE OF TRUSTEE**



1 § -701 Accepting or declining trusteeship. (a) Except
2 as otherwise provided in subsection (c), a person designated as
3 trustee accepts the trusteeship:

4 (1) By substantially complying with a method of acceptance
5 provided in the terms of the trust; or

6 (2) If the terms of the trust do not provide a method of
7 acceptance or the method provided in the terms of the
8 trust is not expressly made exclusive, by knowingly
9 accepting delivery of the trust property, knowingly
10 exercising powers or performing duties as trustee, or
11 otherwise indicating acceptance of the trusteeship.

12 (b) A person designated as trustee who has not yet
13 accepted the trusteeship may reject the trusteeship. A
14 designated trustee who does not accept the trusteeship within a
15 reasonable time after knowing of the designation is deemed to
16 have rejected the trusteeship.

17 (c) A person designated as trustee, without accepting the
18 trusteeship, may:

19 (1) Act to preserve the trust property if, within a
20 reasonable time after acting, the person sends a
21 rejection of the trusteeship to the settlor or, if the



1 settlor is dead or lacks capacity, to the designated
2 cotrustee, or, if none, to the successor trustee, or,
3 if none or unknown, to a qualified beneficiary; and

4 (2) Inspect or investigate trust property to determine
5 potential liability under environmental or other law
6 or for any other purpose.

7 § -702 Trustee's bond. (a) A trustee shall give bond
8 to secure performance of the trustee's duties only if the court
9 finds that a bond is needed to protect the interests of the
10 beneficiaries or is required by the terms of the trust and the
11 court has not dispensed with the requirement.

12 (b) The court may specify the amount of a bond, its
13 liabilities, and whether sureties are necessary. The court may
14 modify or terminate a bond at any time.

15 (c) A bank or trust company qualified under chapter 412 to
16 do trust business in this State need not give bond, even if
17 required by the terms of the trust.

18 § -703 Cotrustees. (a) Cotrustees who are unable to
19 reach a unanimous decision after consultation among all the
20 cotrustees may act by majority decision.



1 (b) If a vacancy occurs in a cotrusteeship, the remaining
2 cotrustee or cotrustees may act for the trust.

3 (c) Subject to the settlor's powers to direct under
4 section -808, a cotrustee shall participate in the
5 performance of a trustee's function unless the cotrustee is
6 unavailable to perform the function because of absence, illness,
7 disqualification under other law, or other temporary incapacity,
8 or the cotrustee has properly delegated the performance of the
9 function to another trustee.

10 (d) If a cotrustee is unavailable to perform duties
11 because of absence, illness, disqualification under other law,
12 or other temporary incapacity, and prompt action is necessary to
13 achieve the purposes of the trust or to avoid injury to the
14 trust property, the remaining cotrustee or a majority of the
15 remaining cotrustees may act for the trust.

16 (e) A cotrustee who has a conflict of interest in
17 performing any duty shall notify the other cotrustee or
18 cotrustees of the conflict and may recuse itself from the
19 transaction and the remaining cotrustee or a majority of the
20 remaining cotrustees may act for the trust.



1 (f) A trustee shall not delegate to a cotrustee the
2 performance of a function the settlor intended the trustees to
3 perform jointly. A trustee may revoke a delegation previously
4 made.

5 (g) Except as otherwise provided in subsection (h), a
6 trustee who does not join in an action of another trustee is not
7 liable for the action.

8 (h) Subject to the settlor's powers to direct under
9 section -808, each trustee shall exercise reasonable care to:

10 (1) Prevent a cotrustee from committing a serious breach
11 of trust; and

12 (2) Compel a cotrustee to redress a serious breach of
13 trust.

14 (i) A dissenting trustee who joins in an action at the
15 direction of the majority of the trustees and who notified the
16 cotrustee or cotrustees in writing of the dissent at or before
17 the time of the action shall not be liable for the action unless
18 the action is a serious breach of trust.

19 § -704 Vacancy in trusteeship; appointment of successor.

20 (a) A vacancy in a trusteeship occurs if:



1 (1) A person designated as trustee rejects the
2 trusteeship;

3 (2) A person designated as trustee cannot be identified,
4 cannot be located, or does not exist;

5 (3) A trustee resigns;

6 (4) A trustee is disqualified, incapacitated, or removed;

7 (5) A trustee dies; or

8 (6) A guardian or conservator is appointed for an
9 individual serving as trustee.

10 (b) If one or more cotrustees remain in office, a vacancy
11 in a trusteeship need not be filled. A vacancy in a trusteeship
12 shall be filled if the trust has no remaining trustee.

13 (c) A vacancy in a trusteeship of a noncharitable trust
14 that is required to be filled shall be filled in the following
15 order of priority:

16 (1) By a person designated in the terms of the trust to
17 act as successor trustee or a person named in the
18 trust who has authority to appoint a successor
19 trustee;

20 (2) By a person selected by unanimous agreement of the
21 qualified beneficiaries; or



1 (3) By a person appointed by the court.

2 (d) A vacancy in a trusteeship of a charitable trust that
3 is required to be filled shall be filled in the following order
4 of priority:

5 (1) By a person designated in the terms of the trust to
6 act as successor trustee or a person named in the
7 trust who has authority to appoint a successor
8 trustee;

9 (2) By a person selected by the charitable organizations
10 expressly designated to receive distributions under
11 the terms of the trust if the attorney general concurs
12 in the selection; or

13 (3) By a person appointed by the court.

14 (e) Regardless of whether a vacancy in a trusteeship
15 exists or is required to be filled, the court may appoint an
16 additional trustee or special fiduciary whenever the court
17 considers the appointment necessary for the administration of
18 the trust.

19 § -705 Resignation of trustee. (a) A trustee may
20 resign:



- 1 (1) For a revocable trust, upon at least thirty days'
2 notice to the settlor, if living, or if incapacitated,
3 to the settlor's duly appointed agent or conservator,
4 if any, and all cotrustees or, if none, to the
5 designated successor trustee or trustees;
- 6 (2) For an irrevocable trust, upon at least thirty days'
7 notice to the qualified beneficiaries, the settlor, if
8 living, and all cotrustees or, if none, to the
9 designated successor trustee or trustees; or
- 10 (3) With the approval of the court.
- 11 (b) In approving a resignation, the court may issue orders
12 and impose conditions reasonably necessary for the protection of
13 the trust property.
- 14 (c) Any liability of a resigning trustee or of any
15 sureties on the trustee's bond for acts or omissions of the
16 trustee is not discharged or affected by the trustee's
17 resignation.
- 18 (d) A trustee may seek release and discharge directly from
19 the beneficiaries or the court.
- 20 § -706 Removal of trustee. (a) For an irrevocable
21 trust, a cotrustee or a qualified beneficiary, or in the case of



1 a charitable trust, the attorney general, may request the court
2 to remove a trustee, or a trustee may be removed by the court on
3 its own initiative. In the case of an irrevocable trust in
4 which the settlor has a retained interest, the settlor, the
5 settlor's conservator or guardian, or the settlor's duly
6 authorized agent under a durable power of attorney may also
7 request the court to remove a trustee.

8 (b) For a revocable trust, the settlor, the settlor's
9 conservator or guardian, the settlor's duly authorized agent
10 under a durable power of attorney, or a cotrustee may request
11 the court to remove a trustee, or a trustee may be removed by
12 the court on its own initiative.

13 (c) The court may remove a trustee if:

14 (1) The trustee has committed a serious breach of trust;

15 (2) Lack of cooperation among cotrustees substantially
16 impairs the administration of the trust;

17 (3) Because of unfitness, unwillingness, persistent
18 failure of the trustee to administer the trust
19 effectively, or any other reason, the court determines
20 removal of the trustee best serves the interests of
21 the beneficiaries; or



1 (4) Removal of the trustee best serves the interests of
2 all beneficiaries and:

3 (A) There has been a substantial change of
4 circumstances or removal is requested by all of
5 the qualified beneficiaries;

6 (B) Removal is not inconsistent with a material
7 purpose of the trust; and

8 (C) A suitable cotrustee or successor trustee is
9 available.

10 (d) Pending a final decision on a request to remove a
11 trustee, or in lieu of or in addition to removing a trustee, the
12 court may order appropriate relief under section -1001(b) as
13 may be necessary to protect the trust property or the interests
14 of the beneficiaries.

15 § -707 Delivery of property by former trustee. (a)

16 Unless a cotrustee remains in office or the court otherwise
17 orders, and until the trust property is delivered to a successor
18 trustee, or other person entitled to it, a trustee who has
19 resigned or been removed has the duties of a trustee and the
20 powers necessary to protect the trust property.



1 (b) A trustee who has resigned or been removed shall,
2 within a reasonable time, deliver the trust property within the
3 trustee's possession to the cotrustee, successor trustee, or
4 other person entitled to it.

5 § -708 Compensation of trustee. (a) A trustee's
6 compensation shall be as set forth in sections 607-18
7 and 607-20, as appropriate.

8 (b) On petition of an interested person, after notice to
9 all interested persons, the court may review the propriety of
10 employment of any person by a trustee, including any attorney,
11 auditor, investment advisor, or other specialized agent or
12 assistant; the reasonableness of the compensation of any person
13 so employed; the reasonableness of the determination of trust
14 estate value or income made by the trustee for the purpose of
15 computing the fee allowed by sections 607-18 and 607-20; and the
16 reasonableness of any additional compensation for special
17 services under sections 607-18 and 607-20. Any person who has
18 received excessive compensation from a trust may be ordered to
19 make appropriate refunds.

20 § -709 Reimbursement of expenses. (a) A trustee or
21 designated trustee who acts in good faith is entitled to



1 reimbursement out of the trust property, with interest as
2 appropriate, for:

- 3 (1) Expenses that were properly incurred in the
4 administration of the trust, including the defense or
5 prosecution of any action, whether successful or not,
6 unless the trustee is determined to have wilfully or
7 wantonly committed a material breach of trust; or
8 (2) To the extent necessary to prevent unjust enrichment
9 of the trust, expenses that were not properly incurred
10 in the administration of the trust.
- 11 (b) An advance by the trustee or designated trustee of
12 money for the protection of the trust gives rise to a lien
13 against trust property to secure reimbursement with reasonable
14 interest.

15 **PART VIII. DUTIES AND POWERS OF TRUSTEE**

16 § -801 Duty to administer trust. Upon acceptance of a
17 trusteeship, the trustee shall administer the trust in good
18 faith, in accordance with its terms and purposes and the
19 interests of the beneficiaries, and in accordance with this
20 chapter.



1 § -802 Duty of loyalty. (a) A trustee shall administer
2 the trust solely in the interests of the beneficiaries.

3 (b) Subject to the rights of persons dealing with or
4 assisting the trustee as provided in section -1012, a sale,
5 encumbrance, or other transaction involving the investment or
6 management of trust property entered into by the trustee for the
7 trustee's own personal account or that is otherwise affected by
8 a conflict between the trustee's fiduciary and personal
9 interests is voidable by a beneficiary affected by the
10 transaction unless:

11 (1) The transaction was authorized by the terms of the
12 trust;

13 (2) The transaction was approved by the court;

14 (3) The beneficiary did not commence a judicial proceeding
15 within the time allowed by section -1005;

16 (4) The beneficiary consented to the trustee's conduct,
17 ratified the transaction, or released the trustee in
18 compliance with section -1009; or

19 (5) The transaction involves a contract entered into or
20 claim acquired by the trustee before the person became
21 or contemplated becoming a trustee.



1 (c) A sale, encumbrance, or other transaction involving
2 the investment or management of trust property is presumed to be
3 affected by a conflict between personal and fiduciary interests
4 if it is entered into by the trustee with:

5 (1) The trustee's spouse, or the spouse's descendants,
6 siblings, or ancestors, and their spouses;

7 (2) The trustee's descendants, siblings, ancestors, or
8 their spouses;

9 (3) An agent or attorney of the trustee;

10 (4) A corporation or other person or enterprise in which
11 the trustee has such a substantial interest that it
12 might affect the trustee's best judgment; or

13 (5) A corporation or other person or enterprise that has
14 such a substantial interest in the trustee that it
15 might affect the trustee's best judgment.

16 (d) A transaction not concerning trust property in which
17 the trustee engages in the trustee's individual capacity
18 involves a conflict between personal and fiduciary interests if
19 the transaction concerns an opportunity properly belonging to
20 the trust.



1 (e) An investment by a trustee in securities of an
2 investment company or investment trust to which the trustee or
3 its affiliate provides services in a capacity other than as
4 trustee is not presumed to be affected by a conflict between
5 personal and fiduciary interests if the investment otherwise
6 complies with the prudent investor rule of part IX. In addition
7 to its compensation for acting as trustee, the trustee or its
8 affiliate may be compensated by the investment company or
9 investment trust for providing those services out of fees
10 charged to the trust. If the trustee or its affiliate receives
11 compensation from the investment company or investment trust for
12 providing investment advisory or investment management services,
13 the trustee shall at least annually notify the persons entitled
14 under section -813 to receive a copy of the trustee's annual
15 report of the rate and method by which that compensation was
16 determined.

17 (f) In voting shares of stock or in exercising powers of
18 control over similar interests in other forms of business
19 entities, the trustee shall act in the best interests of the
20 beneficiaries. If the trust is the sole owner of a corporation
21 or another form of a business entity, the trustee shall elect or



1 appoint directors or other managers who will manage the
2 corporation or business entity in the best interests of the
3 beneficiaries.

4 (g) This section does not preclude the following
5 transactions, if fair to the beneficiaries:

6 (1) An agreement between a trustee and a beneficiary
7 relating to the appointment or compensation of the
8 trustee;

9 (2) Payment of reasonable compensation to the trustee;

10 (3) A transaction between a trust and another trust,
11 decedent's estate, or conservatorship of which the
12 trustee is a fiduciary or in which a beneficiary has
13 an interest;

14 (4) A deposit of trust money in a regulated
15 financial-service institution operated by the trustee;
16 or

17 (5) An advance by the trustee of money for the protection
18 of the trust.

19 (h) The court may appoint a special fiduciary to make a
20 decision with respect to any proposed transaction that might
21 violate this section if entered into by the trustee.



1 § -803 **Impartiality.** If a trust has two or more
2 beneficiaries, the trustee shall act impartially in investing,
3 managing, and distributing the trust property, giving due regard
4 to the beneficiaries' respective interests.

5 § -804 **Prudent administration.** A trustee shall
6 administer the trust as a prudent person would, by considering
7 the purposes, terms, distributional requirements, and other
8 circumstances of the trust. In satisfying this standard, the
9 trustee shall exercise reasonable care, skill, and caution.

10 § -805 **Costs of administration.** In administering a
11 trust, the trustee may incur only costs that are reasonable in
12 relation to the trust property, the purposes of the trust, and
13 the skills of the trustee.

14 § -806 **Trustee's skills.** A trustee who has special
15 skills or expertise or is named trustee in reliance upon the
16 trustee's representation that the trustee has special skills or
17 expertise shall use those special skills or expertise.

18 § -807 **Delegation by trustee.** (a) A trustee may
19 delegate duties and powers that a prudent trustee of comparable
20 skills could properly delegate under the circumstances. The
21 trustee shall exercise reasonable care, skill, and caution in:



1 (1) Selecting an agent;

2 (2) Establishing the scope and terms of the delegation,
3 consistent with the purposes and terms of the trust;
4 and

5 (3) Periodically reviewing the agent's actions to monitor
6 the agent's performance and compliance with the terms
7 of the delegation.

8 (b) In performing a delegated function, an agent owes a
9 duty to the trust to exercise reasonable care to comply with the
10 terms of the delegation.

11 (c) A trustee who complies with subsection (a) shall not
12 be liable to the beneficiaries or to the trust for an action of
13 the agent to whom the function was delegated.

14 (d) By accepting a delegation of powers or duties from the
15 trustee of a trust that is subject to the law of this State, an
16 agent submits to the jurisdiction of the courts of this State,
17 even if the agency agreement provides otherwise, and the agent
18 may be made a party to any action or proceeding if the issues
19 relate to a decision, action, or inaction of the agent.

20 (e) Upon petition of a qualified beneficiary, after notice
21 to all qualified beneficiaries, the trustee, and the agent of



1 the trustee, the court may review the employment of any agent by
2 the trustee and the reasonableness of the agent's compensation.
3 Any agent who is found to have received excess compensation from
4 a trust may be ordered to make appropriate refunds.

5 § -808 Powers to direct. (a) While a trust is
6 revocable and the settlor has capacity, the trustee may follow a
7 written direction of the settlor that is contrary to the terms
8 of the trust.

9 (b) The terms of a trust may confer upon a trustee or
10 other person a power to direct the modification or termination
11 of the trust.

12 (c) Whenever the terms of a trust direct that an advisor,
13 rather than the trustee, shall have authority for certain
14 fiduciary actions, the standard of care and performance for
15 actions that are within the scope of the advisor's authority
16 under the terms of a trust shall be as follows:

17 (1) Where one or more persons are given authority by the
18 terms of a trust and accept this authority to direct,
19 consent to, or disapprove a trustee's actual or
20 proposed investment decisions, distribution decisions,
21 or any other decision of the trustee, those persons



1 shall be considered to be advisors and shall have the
2 duties and obligations of fiduciaries when exercising
3 the given authority, unless the trust provides
4 otherwise;

5 (2) If a trust provides that a trustee is to follow the
6 direction of an advisor and the trustee acts in
7 accordance with the advisor's direction, then, except
8 in cases of wilful misconduct or gross negligence on
9 the part of the trustee so directed, the trustee shall
10 not be liable for any loss resulting directly or
11 indirectly from any such act;

12 (3) If a trust provides that a trustee is to make
13 decisions with the consent of an advisor, then, except
14 in cases of wilful misconduct or gross negligence on
15 the part of the trustee, the trustee shall not be
16 liable for any loss resulting directly or indirectly
17 from any act taken or omitted as a result of the
18 advisor's failure to provide consent after having been
19 requested to do so by the trustee; and

20 (4) Whenever a trust provides that a trustee is to follow
21 the direction of an advisor with respect to investment



1 decisions, distribution decisions, or any other
2 decision of the trustee, then, except to the extent
3 that the terms of the trust provide otherwise, the
4 trustee shall have no duty to:

- 5 (A) Monitor the conduct of the advisor;
6 (B) Provide advice to the advisor or consult with the
7 advisor; or
8 (C) Communicate with, warn, or apprise any
9 beneficiary or third party concerning instances
10 in which the trustee would or might have
11 exercised the trustee's own discretion in a
12 manner different from the manner directed by the
13 advisor.

14 Absent clear and convincing evidence to the contrary, the
15 actions of the trustee pertaining to matters within the scope of
16 the advisor's authority, such as confirming that the advisor's
17 directions have been carried out and recording and reporting
18 actions taken at the advisor's direction, shall be presumed to
19 be administrative actions taken by the trustee solely to allow
20 the trustee to perform the duties assigned to the trustee under
21 the trust, and the administrative actions shall not be deemed to



1 constitute an undertaking by the trustee to monitor the advisor
2 or otherwise participate in actions within the scope of the
3 advisor's authority.

4 (d) A person, other than a beneficiary, who holds a power
5 to direct is presumptively a fiduciary who, as such, is required
6 to act in good faith with regard to the purposes of the trust
7 and the interests of the beneficiaries. The holder of a power
8 to direct is liable for any loss that results from breach of a
9 fiduciary duty.

10 (e) For purposes of this section:

11 "Advisor" includes a protector that has been granted powers
12 and authority by the terms of a trust, including the power to:

13 (1) Remove and appoint trustees, advisors, trust committee
14 members, and other protectors;

15 (2) Modify or amend the trust to achieve a favorable tax
16 status or to facilitate the efficient administration
17 of the trust; and

18 (3) Modify, expand, or restrict the terms of a power of
19 appointment granted to a beneficiary by the trust.

20 "Investment decision" means the retention, purchase, sale,
21 exchange, tender, or other transaction affecting the ownership



1 of or rights in any investment, or the valuation of nonpublicly
2 traded investments.

3 **§ -809 Control and protection of trust property.** A
4 trustee shall take reasonable steps to take control of and
5 protect the trust property.

6 **§ -810 Recordkeeping and identification of trust**
7 **property.** (a) A trustee shall keep adequate records of the
8 administration of the trust.

9 (b) A trustee shall keep trust property separate from the
10 trustee's own property.

11 (c) Except as otherwise provided in subsection (d), a
12 trustee shall cause the trust property to be designated so that
13 the interest of the trust, to the extent feasible, appears in
14 records maintained by a party other than a trustee or
15 beneficiary.

16 (d) If the trustee maintains records clearly indicating
17 the respective interests, a trustee may invest as a whole the
18 property of two or more separate trusts.

19 **§ -811 Enforcement and defense of claims.** (a) A
20 trustee shall take reasonable steps to enforce claims of the
21 trust and to defend claims against the trust.



1 (b) A trustee may abandon or assign to one or more of the
2 beneficiaries of the trust any claim that it believes is not
3 prudent to enforce.

4 § -812 Collecting trust property. (a) A trustee shall
5 take reasonable steps to compel a former trustee or other person
6 to deliver trust property to the trustee and to redress a breach
7 of trust known to the trustee to have been committed by a former
8 trustee or other person, unless the beneficiaries consent to,
9 release, or ratify the actions of the former trustee or other
10 person under section -1009.

11 (b) In addition to any other legal or equitable remedies,
12 a person who receives a distribution from a trust shall be
13 liable to return the distribution to the extent that the trustee
14 or a court subsequently determines that the person was not
15 entitled to the distribution.

16 § -813 Duty to inform and report. (a) During the
17 lifetime of the settlor of a revocable trust, regardless of
18 whether the settlor has capacity to revoke the trust, the
19 trustee's duties under this section are owed exclusively to the
20 settlor. If the settlor lacks capacity to revoke the trust, a
21 trustee may satisfy the trustee's duties under this section by



1 providing information and reports to any one or more of the
2 following in the order of preference listed:

3 (1) The person or persons designated by the settlor in the
4 trust to receive information and reports on the
5 settlor's behalf;

6 (2) The settlor's conservator;

7 (3) The settlor's guardian;

8 (4) The settlor's agent under durable power of attorney;

9 or

10 (5) The settlor's spouse; provided that the spouse is a
11 beneficiary under the trust.

12 If the settlor lacks capacity to revoke the trust and there
13 are no persons listed in this subsection to whom the trustee may
14 provide information and reports, the trustee shall satisfy its
15 duties under this section by providing information and reports
16 to the qualified beneficiaries.

17 (b) After the settlor's death, a trustee shall keep the
18 qualified beneficiaries of the trust reasonably informed about
19 the administration of the trust and of the material facts
20 necessary for them to protect their interests. Unless
21 unreasonable under the circumstances, a trustee shall promptly



1 respond to a qualified beneficiary's request for information
2 related to the administration of the trust.

3 (c) After the settlor's death, a trustee:

4 (1) Upon request of a qualified beneficiary, shall
5 promptly furnish to the qualified beneficiary a copy
6 of the trust instrument;

7 (2) Within sixty days after accepting a trusteeship, shall
8 notify the qualified beneficiaries of the acceptance
9 and of the trustee's name, address, and telephone
10 number;

11 (3) Within sixty days after the date the trustee acquires
12 knowledge of the creation of an irrevocable trust or
13 the date the trustee acquires knowledge that a
14 formerly revocable trust has become irrevocable,
15 whether by the death of the settlor or otherwise,
16 shall notify the qualified beneficiaries of the
17 trust's existence, of the identity of the settlor or
18 settlors, of the right to request a copy of the trust
19 instrument, and of the right to a trustee's report as
20 provided in subsection (d); and



1 (4) Shall notify the qualified beneficiaries in advance of
2 any change in the method or rate of the trustee's
3 compensation.

4 (d) A trustee shall send to the distributees or
5 permissible distributees of trust income or principal and other
6 qualified beneficiaries who request it, at least annually and at
7 the termination of the trust, a report of the trust property,
8 liabilities, receipts, and disbursements, including the source
9 and amount of the trustee's compensation, and a listing of the
10 trust assets and, if feasible, their respective market values.
11 Upon a vacancy in a trusteeship, unless a cotrustee remains in
12 office, a report shall be sent to the qualified beneficiaries by
13 the former trustee. A personal representative, conservator, or
14 guardian may send the qualified beneficiaries a report on behalf
15 of a deceased or incapacitated trustee.

16 (e) A qualified beneficiary may waive the right to a
17 trustee's report or other information otherwise required to be
18 furnished under this section. A qualified beneficiary, with
19 respect to future reports and other information, may withdraw a
20 waiver previously given.



1 (f) A trustee may charge a reasonable fee to a qualified
2 beneficiary for providing information under this section.

3 (g) Every trustee acting under appointment of any court or
4 under any appointment requiring the approval of any court shall,
5 except where the prior trustee, if any, was not required by
6 statute or the instrument creating the trust or appointing the
7 trustee to file an account, file annually with the court having
8 jurisdiction thereof an account showing in detail all receipts
9 and disbursements, together with a full and detailed inventory
10 of all property in the trustee's possession or under the
11 trustee's control; provided that the court, when it deems it
12 advisable in the interests of the beneficiaries, may permit the
13 accounts to be filed biennially or triennially instead of
14 annually or, if they are filed annually, may permit them to
15 accumulate to be passed upon biennially or triennially; provided
16 further that the court on its own examination or that of its
17 clerk shall, without reference to a master, pass upon the
18 accounts when the annual income does not exceed \$1,000, except
19 in the case of a final account when the court may refer the same
20 to a master, irrespective of the amount of the annual income, if
21 for any reason it is deemed proper or necessary. If any trustee



1 fails to file an account as required in this section, the clerk
2 of the court in which the trustee is required to file the
3 account shall notify the trustee promptly of the failure, and if
4 the trustee fails to file the account within thirty days after
5 the notification, the trustee shall be cited to appear before
6 the court and be required to show cause why the trustee should
7 not be punished for contempt of court as provided by
8 section 710-1077, and the trustee shall be subject to all of the
9 penalties provided in that section. The court may also, in its
10 discretion, remove the trustee.

11 (h) Unless otherwise required by the instrument creating
12 the trust, nothing in this section shall be construed to require
13 the filing of an annual account either by a trustee or trustees
14 appointed by the court as additional trustee or trustees to
15 serve with or in the place and stead of a trustee or trustees
16 appointed in the instrument creating a trust or by a trustee
17 whose appointment is made in accordance with or pursuant to the
18 instrument creating the trust where the appointment has been
19 confirmed by any court in proceedings brought to secure the
20 confirmation or approval thereof.

21 (i) Subsection (c) (2) and (3) shall not apply to:



(1) A trustee who accepts a trusteeship before the effective date of this chapter;

(2) An irrevocable trust created before the effective date of this chapter; or

(3) A revocable trust that becomes irrevocable before the effective date of this chapter.

§ -814 Discretionary powers; tax savings. (a)

Notwithstanding the breadth of discretion granted to a trustee in the terms of the trust, including the use of terms such as "absolute", "sole", or "uncontrolled", the trustee shall exercise a discretionary power in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries.

(b) Subject to subsection (d), and unless the terms of the trust expressly indicate that a rule in this subsection does not apply:

(1) A person other than a settlor who is a beneficiary and trustee of a trust that confers on the trustee a power to make discretionary distributions to or for the trustee's personal benefit may exercise the power only in accordance with an ascertainable standard; and



1 (2) A trustee shall not exercise a power to make
2 discretionary distributions to satisfy a legal
3 obligation of support that the trustee personally owes
4 another person.

5 (c) A power whose exercise is limited or prohibited by
6 subsection (b) may be exercised by a majority of the remaining
7 trustees whose exercise of the power is not so limited or
8 prohibited. If the power of all trustees is so limited or
9 prohibited, the court may appoint a special fiduciary with
10 authority to exercise the power.

11 (d) Subsection (b) shall not apply to:

12 (1) A power held by the settlor's spouse who is the
13 trustee of a trust for which a marital deduction, as
14 defined in section 2056(b)(5) or 2523(e) of the
15 Internal Revenue Code of 1986, as in effect on the
16 effective date of this chapter was previously allowed;

17 (2) Any trust during any period that the trust may be
18 revoked or amended by its settlor; or

19 (3) A trust if contributions to the trust qualify for the
20 annual exclusion under section 2503(c) of the Internal



1 Revenue Code of 1986, as in effect on the effective
2 date of this chapter.

3 § -815 General powers of trustee. (a) A trustee,
4 without authorization by the court, may exercise:

5 (1) Powers conferred by the terms of the trust; and

6 (2) Except as limited by the terms of the trust:

7 (A) All powers over the trust property that an
8 unmarried competent owner has over individually
9 owned property;

10 (B) Any other powers appropriate to achieve the
11 proper investment, management, and distribution
12 of the trust property; and

13 (C) Any other powers conferred by this chapter.

14 (b) The exercise of a power is subject to the fiduciary
15 duties prescribed by this part.

16 § -816 Specific powers of trustee. Without limiting the
17 authority conferred by section -815, a trustee may:

18 (1) Collect trust property, accept or reject additions to
19 the trust property from a settlor or any other person,
20 and retain trust property, even if the trustee has a
21 personal interest in the property, until in the



1 judgment of the trustee, disposition of the property
2 should be made;

3 (2) Invest and reinvest trust assets and acquire or sell
4 property for cash or on credit at a public or private
5 sale;

6 (3) Exchange, partition, or otherwise change the character
7 of trust property;

8 (4) Deposit trust money in an account in a regulated
9 financial services institution, including a financial
10 institution operated by the trustee, if the deposit is
11 adequately insured or secured;

12 (5) Borrow money, with or without security, including from
13 a corporate trustee's lending department, and mortgage
14 or pledge trust property for a period within or
15 extending beyond the duration of the trust; or advance
16 money for the protection of the trust and for all
17 expenses, losses, and liabilities sustained in the
18 administration of the trust or because of the holding
19 or ownership of any trust assets;

20 (6) With respect to an interest in a proprietorship,
21 partnership, limited liability company, business



1 trust, corporation, or other form of business or
2 enterprise, continue the business or other enterprise
3 and take any action that may be taken by shareholders,
4 members, or property owners, including merging,
5 dissolving, or otherwise changing the form of business
6 organization or contributing additional capital;

7 (7) With respect to stocks or other securities, exercise
8 the rights of an absolute owner, including the right
9 to:

10 (A) Vote, or give proxies to vote, with or without
11 power of substitution, or enter into or continue
12 a voting trust agreement;

13 (B) Hold a security in the name of a nominee or in
14 other form without disclosure of the trust so
15 that title may pass by delivery;

16 (C) Pay calls, assessments, and other sums chargeable
17 or accruing against the securities and sell or
18 exercise stock option, subscription, conversion,
19 or other rights; and

20 (D) Deposit the securities with a depositary or other
21 regulated financial services institution;



- 1 (8) With respect to an interest in real property,
2 construct, or make ordinary or extraordinary repairs
3 to, alterations to, or improvements in, buildings or
4 other structures, demolish improvements, raze existing
5 or erect new party walls or buildings, subdivide or
6 develop land, dedicate land to public use, with or
7 without consideration, or grant public or private
8 easements, and make or vacate plats and adjust
9 boundaries;
- 10 (9) Enter into a lease for any purpose as lessor or
11 lessee, including a lease or other arrangement for
12 exploration and removal of natural resources, with or
13 without the option to purchase or renew, for a period
14 within or extending beyond the duration of the trust;
- 15 (10) Grant an option involving a sale, lease, or other
16 disposition of trust property or acquire an option for
17 the acquisition of property, including an option
18 exercisable beyond the duration of the trust, and
19 exercise an option so acquired;
- 20 (11) Insure the property of the trust against damage or
21 loss and insure the trustee, the trustee's agents, and



1 beneficiaries against liability arising from the
2 administration of the trust;

3 (12) Abandon or decline to administer property of no value
4 or of insufficient value to justify its collection or
5 continued administration;

6 (13) With respect to possible liability for violation of
7 environmental law:

8 (A) Inspect or investigate property the trustee holds
9 or has been asked to hold, or property owned or
10 operated by an organization in which the trustee
11 holds or has been asked to hold an interest, for
12 the purpose of determining the application of
13 environmental law with respect to the property;

14 (B) Take action to prevent, abate, or otherwise
15 remedy any actual or potential violation of any
16 environmental law affecting property held
17 directly or indirectly by the trustee, whether
18 taken before or after the assertion of a claim or
19 the initiation of governmental enforcement;

20 (C) Decline to accept property into trust or disclaim
21 any power with respect to property that is or may



1 be burdened with liability for violation of
2 environmental law;

3 (D) Compromise claims against the trust that may be
4 asserted for an alleged violation of
5 environmental law; and

6 (E) Pay the expense of any inspection, review,
7 abatement, or remedial action to comply with
8 environmental law;

9 (14) Pay or contest any claim, settle a claim by or against
10 the trust, and release, in whole or in part, a claim
11 belonging to the trust;

12 (15) Pay taxes, assessments, compensation of the trustee
13 and of employees and agents of the trust, and other
14 expenses incurred in the administration of the trust;

15 (16) Exercise elections with respect to federal, state, and
16 local taxes;

17 (17) Select a mode of payment under any employee benefit or
18 retirement plan, annuity, or life insurance payable to
19 the trustee, exercise rights thereunder, including
20 exercise of the right to indemnification for expenses



1 and against liabilities, and take appropriate action
2 to collect the proceeds;

3 (18) Make loans out of trust property, including loans to a
4 beneficiary on terms and conditions the trustee
5 considers to be fair and reasonable under the
6 circumstances, and the trustee has a lien on future
7 distributions for repayment of those loans;

8 (19) Pledge trust property to guarantee loans made by
9 others to the beneficiary or to an entity in which the
10 trust or beneficiary has an ownership interest;
11 provided that this power shall not apply to any
12 beneficiary whose interest is subject to a spendthrift
13 provision;

14 (20) Appoint a trustee to act in another jurisdiction with
15 respect to trust property located in the other
16 jurisdiction, confer upon the appointed trustee any or
17 all of the powers and duties of the appointing
18 trustee, require that the appointed trustee furnish
19 security, and remove any trustee so appointed;

20 (21) Pay an amount distributable to a beneficiary who is
21 under a legal disability or who the trustee reasonably



1 believes is incapacitated, by paying it directly to
2 the beneficiary or applying it for the beneficiary's
3 benefit, or by:

4 (A) Paying it to the beneficiary's conservator or, if
5 the beneficiary does not have a conservator, the
6 beneficiary's guardian;

7 (B) Paying it to the beneficiary's custodian under
8 chapter 553A, the Hawaii Uniform Transfers to
9 Minors Act, or custodial trustee under
10 chapter 554B, the Hawaii Uniform Custodial Trust
11 Act, and, for that purpose, creating a
12 custodianship or custodial trust;

13 (C) If the trustee does not know of a conservator,
14 guardian, custodian, or custodial trustee, paying
15 it to an adult relative or other person having
16 legal or physical care or custody of the
17 beneficiary, to be expended on the beneficiary's
18 behalf;

19 (D) Managing it as a separate fund on the
20 beneficiary's behalf, subject to the



1 beneficiary's continuing right to withdraw the
2 distribution; or

3 (E) Creating or funding a plan under section 529 of
4 the Internal Revenue Code of 1986, in effect on
5 July 1, 2003, for the beneficiary's benefit;

6 (22) On distribution of trust property or the division or
7 termination of a trust, make distributions in divided
8 or undivided interests, allocate particular assets in
9 proportionate or disproportionate shares, value the
10 trust property for those purposes, and adjust for
11 resulting differences in valuation;

12 (23) Resolve a dispute concerning the interpretation of the
13 trust or its administration by mediation, arbitration,
14 or other procedure for alternative dispute resolution;

15 (24) Prosecute or defend an action, claim, or judicial
16 proceeding in any jurisdiction to protect trust
17 property and the trustee in the performance of the
18 trustee's duties, including petitioning the court for
19 approval of accounts and termination and discharge of
20 the trustee;



1 (25) Sign and deliver contracts and other instruments that
2 are useful to achieve or facilitate the exercise of
3 the trustee's powers;

4 (26) On termination of the trust, exercise the powers
5 appropriate to wind up the administration of the trust
6 and distribute the trust property to the persons
7 entitled to it;

8 (27) Divide, sever, or separate a single trust into two or
9 more separate trusts or merge two or more separate
10 trusts into a single trust for administration or tax
11 purposes, including the allocation of the
12 generation-skipping transfer exemption; provided that
13 the terms of the new trust provide, in the aggregate,
14 for the same succession of interests and beneficiaries
15 as are provided in the original trust; and

16 (28) Employ persons, including attorneys, auditors,
17 investment advisors, or agents, even if they are
18 associated with the trustee, to advise or assist the
19 trustee in performance of the trustee's administrative
20 duties; act without independent investigation upon
21 their recommendations; and rather than acting



1 personally, employ one or more agents to perform any
2 administrative acts, regardless of whether the acts
3 are discretionary.

4 § -817 Distribution upon termination. (a) Upon
5 termination or partial termination of a trust, the trustee may
6 send to the beneficiaries a proposal for distribution. The
7 right of any beneficiary to object to the proposed distribution
8 terminates if the beneficiary does not notify the trustee of an
9 objection within sixty days after the proposal was sent but only
10 if the proposal informed the beneficiary of the right to object
11 and of the time allowed for objection.

12 (b) Upon the occurrence of an event terminating or
13 partially terminating a trust, the trustee shall proceed
14 expeditiously to distribute the trust property to the persons
15 entitled to it, subject to the right of the trustee to retain a
16 reasonable reserve for the payment of debts, expenses, and
17 taxes.

18 (c) A release by a beneficiary of a trustee from liability
19 for breach of trust is invalid to the extent:

20 (1) It was induced by improper conduct of the trustee; or



1 (2) The trustee failed to adequately disclose to the
2 beneficiary, at the time of the release, the material
3 facts relating to the breach or sufficient information
4 to enable the beneficiary to know of a potential claim
5 or to inquire into the existence of a breach or
6 potential claim.

7 (d) A person who receives a distribution from a trust that
8 has terminated shall be liable to return the distribution to the
9 extent that it is subsequently determined that the person was
10 not entitled to the distribution.

11 **PART IX. UNIFORM PRUDENT INVESTOR ACT**

12 § -901 Prudent investor rule. (a) Except as otherwise
13 provided in subsection (b), a trustee who invests and manages
14 trust assets owes a duty to the beneficiaries of the trust to
15 comply with the prudent investor rule set forth in this part.

16 (b) The prudent investor rule, a default rule, may be
17 expanded, restricted, eliminated, or otherwise altered by the
18 provisions of a trust. A trustee shall not be liable to a
19 beneficiary to the extent that the trustee acted in reasonable
20 reliance on the provisions of the trust.



1 § -902 Standard of care; portfolio strategy; risk and
2 return objectives. (a) A trustee shall invest and manage trust
3 assets as a prudent investor would by considering the purposes,
4 terms, distribution requirements, and other circumstances of the
5 trust. In satisfying this standard, the trustee shall exercise
6 reasonable care, skill, and caution.

7 (b) A trustee's investment and management decisions
8 respecting individual assets shall be evaluated not in
9 isolation, but in the context of the trust portfolio as a whole
10 and as a part of an overall investment strategy having risk and
11 return objectives reasonably suited to the trust.

12 (c) Among circumstances that a trustee shall consider in
13 investing and managing trust assets are the following as are
14 relevant to the trust or its beneficiaries:

- 15 (1) General economic conditions;
16 (2) The possible effect of inflation or deflation;
17 (3) The expected tax consequences of investment decisions
18 or strategies;
19 (4) The role that each investment or course of action
20 plays within the overall trust portfolio, which may
21 include financial assets, interests in closely held



enterprises, tangible and intangible personal property, and real property;

(5) The expected total return from income and the appreciation of capital;

(6) Other resources of the beneficiaries;

(7) Needs for liquidity, regularity of income, and preservation or appreciation of capital; and

(8) An asset's special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries.

(d) A trustee shall make a reasonable effort to verify facts relevant to the investment and management of trust assets.

(e) A trustee may invest in any kind of property or type of investment consistent with the standards of this chapter.

§ -903 Diversification. A trustee shall diversify the investments of the trust unless the trustee reasonably determines that, because of special circumstances or directives of the trust, the purposes of the trust are better served without diversifying.

§ -904 Duties at inception of trusteeship. Within a reasonable time after accepting a trusteeship or receiving trust



1 assets, a trustee shall review the trust assets and make and
2 implement decisions concerning the retention and disposition of
3 assets to bring the trust portfolio into compliance with the
4 purposes, terms, distribution requirements, and other
5 circumstances of the trust and with the requirements of this
6 part.

7 § -905 Reviewing compliance. Compliance with the
8 prudent investor rule is determined in light of the facts and
9 circumstances existing at the time of a trustee's decision or
10 action and not by hindsight.

11 § -906 Language invoking standard of part. The
12 following terms or comparable language in the provisions of a
13 trust, unless otherwise limited or modified, authorizes any
14 investment or strategy permitted under this part: "authorized
15 investments"; "investments permissible by law for investment of
16 trust funds"; "legal investments"; "prudent investor rule";
17 "prudent man rule"; "prudent person rule"; "prudent trustee
18 rule"; and "using the judgment and care under the circumstances
19 then prevailing that persons of prudence, discretion, and
20 intelligence exercise in the management of their own affairs,
21 not in regard to speculation but in regard to the permanent



1 disposition of their funds, considering the probable income as
2 well as the probable safety of their capital".

3 **PART X. LIABILITY OF TRUSTEES AND RIGHTS OF PERSONS DEALING**
4 **WITH TRUSTEE**

5 **§ -1001 Remedies for breach of trust.** (a) A violation
6 by a trustee of a duty the trustee owes to a beneficiary is a
7 breach of trust. A breach of trust may occur by reason of an
8 action or by reason of a failure to act.

9 (b) To remedy a breach of trust that has occurred or may
10 occur, the court may:

- 11 (1) Compel the trustee to perform the trustee's duties;
- 12 (2) Enjoin the trustee from committing a breach of trust;
- 13 (3) Compel the trustee to redress a breach of trust by
14 paying money, restoring property, or other means;
- 15 (4) Order a trustee to account;
- 16 (5) Appoint a special fiduciary to take possession of the
17 trust property and administer the trust;
- 18 (6) Suspend the trustee;
- 19 (7) Remove the trustee as provided in section -706;
- 20 (8) Reduce or deny compensation to the trustee;



(9) Subject to section -1012, 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 its proceeds;

(10) Order that the trustee, not the trust, shall bear the trustee's attorney's fees and those incurred by other parties to the trust; or

(11) Order any other appropriate relief, including punitive damages.

(c) The court, for cause shown, may relieve a trustee from liability for any breach of trust or wholly or partly excuse a trustee who has acted honestly and reasonably from liability for a breach of trust.

§ -1002 Damages for breach of trust. (a) A trustee who commits a breach of trust is liable to the beneficiaries affected for the greater of:

(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

(2) The profit the trustee made by reason of the breach.



1 (b) Except as otherwise provided in this subsection, if
2 more than one trustee is liable to the beneficiaries for a
3 breach of trust, a trustee is entitled to contribution from the
4 other trustee or trustees. In determining the amount of
5 contribution, the court shall consider the degree of fault of
6 each trustee and whether any trustee or trustees acted in bad
7 faith or with reckless indifference to the purposes of the trust
8 or the interests of the beneficiaries. A trustee who received a
9 benefit from the breach of trust is not entitled to contribution
10 from another trustee to the extent of the benefit received.

11 § -1003 No damages in absence of breach. Absent a
12 breach of trust, a trustee shall not be liable to a beneficiary
13 for a loss or depreciation in the value of trust property or for
14 not having made a profit.

15 § -1004 Attorney's fees and costs. (a) In a judicial
16 proceeding involving the administration, interpretation, or
17 validity of a trust, the court may award reasonable attorney's
18 fees, costs, and expenses to any party to the trust who has
19 acted in the best interest of the trust as a whole, to be paid
20 by another party or from the trust that is the subject of the
21 controversy.



1 (b) If a trustee, a nominated trustee, or a beneficiary,
2 if a trustee or a nominated trustee refuses to act, defends or
3 prosecutes any proceeding regarding the validity of a trust in
4 good faith, whether successful or not, that person is entitled
5 to receive from the trust reasonable costs, expenses, and
6 disbursements, including reasonable attorney's fees, regardless
7 of whether counsel has been retained on a contingency fee basis.

8 § -1005 Limitation of action against trustee. (a) A
9 beneficiary shall not commence a proceeding against a trustee
10 for breach of trust more than one year after the date the
11 beneficiary or a representative of the beneficiary, as described
12 in part III, was sent a report that adequately disclosed the
13 existence of a potential claim for breach of trust and informed
14 the beneficiary of the time allowed for commencing a proceeding.

15 (b) A report adequately discloses the existence of a
16 potential claim for breach of trust if it provides sufficient
17 information so that the beneficiary or representative knows or
18 has reason to know of the potential claim or should have
19 inquired into its existence.

20 (c) If subsection (a) does not apply, a judicial
21 proceeding by a beneficiary against a trustee for breach of



1 trust shall be commenced within three years after the first to
2 occur of:

- 3 (1) The removal or resignation of the trustee;
4 (2) The termination of the beneficiary's interest in the
5 trust; or
6 (3) The termination of the trust.

7 (d) If subsection (a) does not apply, a judicial
8 proceeding by a beneficiary against a deceased trustee for
9 breach of trust shall be commenced within the time frames set
10 forth in section 560:3-803(a).

11 § -1006 Reliance on trust instrument. A trustee who
12 acts in reasonable reliance on the terms of the trust as
13 expressed in the trust instrument shall not be liable to a
14 beneficiary for a breach of trust to the extent the breach
15 resulted from the reliance.

16 § -1007 Event affecting administration or distribution.
17 If the happening of an event, including marriage, divorce,
18 performance of educational requirements, or attainment of a
19 specific age, birth, or death, affects the administration or
20 distribution of a trust, a trustee who has exercised reasonable



1 care to ascertain the happening of the event shall not be liable
2 for a loss resulting from the trustee's lack of knowledge.

3 **§ -1008 Exculpation of trustee.** A term of a trust
4 relieving a trustee of liability for breach of trust is
5 unenforceable to the extent that it:

6 (1) Relieves the trustee of liability for breach of trust
7 committed in bad faith or with reckless indifference
8 to the purposes of the trust or the interests of the
9 beneficiaries; or

10 (2) Was inserted as the result of an abuse by the trustee
11 of either a fiduciary or confidential relationship to
12 the settlor.

13 **§ -1009 Beneficiary's consent, release, or ratification.**
14 A trustee is not liable to a beneficiary for breach of trust if
15 the beneficiary or the representative of the beneficiary, as
16 described in part III, consented to the conduct constituting the
17 breach, released the trustee from liability for the breach, or
18 ratified the transaction constituting the breach, unless:

19 (1) The consent, release, or ratification of the
20 beneficiary was induced by improper conduct of the
21 trustee; or



1 (2) At the time of the consent, release, or ratification,
2 the beneficiary did not know of the beneficiary's
3 rights or of the material facts relating to the
4 breach.

5 **§ -1010 Limitation on personal liability of trustee.**

6 (a) Except as otherwise provided in the contract, a trustee
7 shall not be personally liable on a contract properly entered
8 into in the trustee's fiduciary capacity in the course of
9 administering the trust if the trustee in the contract disclosed
10 the fiduciary capacity.

11 (b) A trustee shall be personally liable for torts
12 committed in the course of administering a trust or for
13 obligations arising from ownership or control of trust property,
14 including liability for violation of environmental law, only if
15 the trustee is personally at fault.

16 (c) A claim based on a contract entered into by a trustee
17 in the trustee's fiduciary capacity, on an obligation arising
18 from ownership or control of trust property, or on a tort
19 committed in the course of administering a trust, may be
20 asserted in a judicial proceeding against the trustee in the



1 trustee's fiduciary capacity, regardless of whether the trustee
2 is personally liable for the claim.

3 (d) Any judgment obtained against the trustee in the
4 trustee's fiduciary capacity may be collected against the trust
5 estate. The questions of liability as between the trust estate
6 and the trustee personally may be determined in a proceeding for
7 accounting, surcharge, or indemnification or other appropriate
8 proceeding.

9 § -1011 Interest as general partner. (a) Unless
10 personal liability is imposed in the contract, a trustee who
11 holds an interest as a general partner in a general or limited
12 partnership shall not be personally liable on a contract entered
13 into by the partnership after the trust's acquisition of the
14 interest if the fiduciary capacity was disclosed in the contract
15 or in a statement previously filed pursuant to part IV of
16 chapter 425, the Uniform Partnership Act, or chapter 425E,
17 Uniform Limited Partnership Act.

18 (b) A trustee who holds an interest as a general partner
19 shall not be personally liable for torts committed by the
20 partnership or for obligations arising from ownership or control
21 of the interest unless the trustee is personally at fault.



1 (c) The immunity provided by this section shall not apply
2 if an interest in the partnership is held by the trustee in a
3 capacity other than that of trustee or is held by the trustee's
4 spouse, one or more of the trustee's descendants, siblings, or
5 parents, or a spouse of any of them.

6 (d) If the trustee of a revocable trust holds an interest
7 as a general partner, the settlor shall be personally liable for
8 contracts and other obligations of the partnership as if the
9 settlor were a general partner.

10 § -1012 Protection of person dealing with trustee. (a)
11 A person, other than a beneficiary, who in good faith assists a
12 trustee or who in good faith and for value deals with a trustee,
13 without actual knowledge that the trustee is exceeding or
14 improperly exercising the trustee's powers, shall be protected
15 from liability as if the trustee properly exercised the power.

16 (b) A person, other than a beneficiary, who in good faith
17 deals with a trustee shall not be required to inquire into the
18 extent of the trustee's powers or the propriety of their
19 exercise.



1 (c) A person who in good faith delivers assets to a
2 trustee shall not be required to ensure their proper
3 application.

4 (d) A person, other than a beneficiary, who in good faith
5 assists a former trustee or who in good faith and for value
6 deals with a former trustee, without actual knowledge that the
7 trusteeship has terminated, shall be protected from liability as
8 if the former trustee were still a trustee.

9 (e) Comparable protective provisions of other laws
10 relating to commercial transactions or transfer of securities by
11 fiduciaries shall prevail over the protection provided by this
12 section.

13 § -1013 Certification of trust. (a) Instead of
14 furnishing a copy of the trust instrument to a person other than
15 a beneficiary, the trustee may furnish to the person a
16 certification of trust containing the following information:

- 17 (1) That the trust exists, the date the trust instrument
18 was executed, and the name of the trust;
19 (2) The identity of the settlor;
20 (3) The identity and address of the currently acting
21 trustee;



1 (4) The powers of the trustee;

2 (5) The revocability or irrevocability of the trust and
3 the identity of any person holding a power to revoke
4 the trust;

5 (6) The authority of cotrustees to sign or otherwise
6 authenticate and whether all or less than all are
7 required to exercise powers of the trustee; and

8 (7) If an action is to be undertaken through an agent,
9 that delegation of the action to an agent is not
10 prohibited by the trust instrument.

11 (b) A certification of trust may be signed or otherwise
12 authenticated by any trustee.

13 (c) A certification of trust shall state that the trust
14 has not been revoked, modified, or amended in any manner that
15 would cause the representations contained in the certification
16 of trust to be incorrect.

17 (d) A certification of trust shall not be required to
18 contain the dispositive terms of a trust.

19 (e) A recipient of a certification of trust may require
20 the trustee to furnish copies of those excerpts from the
21 original trust instrument and later amendments that designate



1 the trustee and confer upon the trustee the power to act in the
2 pending transaction.

3 (f) A person who acts in reliance upon a certification of
4 trust without knowledge that the representations contained
5 therein are incorrect shall not be liable to any person for so
6 acting and may assume without inquiry the existence of the facts
7 contained in the certification. Knowledge of the terms of the
8 trust shall not be inferred solely from the fact that a copy of
9 all or part of the trust instrument is held by the person
10 relying upon the certification.

11 (g) A person who in good faith enters into a transaction
12 in reliance upon a certification of trust may enforce the
13 transaction against the trust property as if the representations
14 contained in the certification were correct.

15 (h) A person making a demand for the trust instrument in
16 addition to a certification of trust or excerpts shall be liable
17 for damages if the court determines that the person did not act
18 in good faith in demanding the trust instrument.

19 (i) This section shall not limit the right of a person to
20 obtain a copy of the trust instrument in a judicial proceeding
21 concerning the trust.



1 **PART XI. MISCELLANEOUS PROVISIONS**

2 § -1101 **Uniformity of application and construction.** In
3 applying and construing this chapter, consideration shall be
4 given to the need to promote uniformity of the law with respect
5 to its subject matter among states that enact it.

6 § -1102 **Electronic records and signatures.** The
7 provisions of this chapter governing the legal effect, validity,
8 or enforceability of electronic records or electronic signatures
9 and of contracts formed or performed with the use of those
10 records or signatures conform to the requirements of section 102
11 of the Electronic Signatures in Global and National Commerce Act
12 (15 U.S.C. 7002) and supersede, modify, and limit the
13 requirements of the Electronic Signatures in Global and National
14 Commerce Act.

15 § -1103 **Severability clause.** If any provision of this
16 chapter or its application to any person or circumstances is
17 held invalid, the invalidity does not affect other provisions or
18 applications of this chapter that can be given effect without
19 the invalid provision or application, and to this end the
20 provisions of this chapter are severable.



1 § -1104 Application to existing relationships. (a)

2 Except as otherwise provided in this chapter, on the effective
3 date of this chapter:

4 (1) This chapter applies to all trusts created before, on,
5 or after its effective date;

6 (2) This chapter applies to all judicial proceedings
7 concerning trusts commenced on or after its effective
8 date;

9 (3) This chapter applies to judicial proceedings
10 concerning trusts commenced before its effective date
11 unless the court finds that application of a
12 particular provision of this chapter would
13 substantially interfere with the effective conduct of
14 the judicial proceedings or prejudice the rights of
15 the parties, in which case the particular provision of
16 this chapter shall not apply and the superseded law
17 applies;

18 (4) Any rule of construction or presumption provided in
19 this chapter applies to trust instruments executed
20 before the effective date of the chapter unless there



1 is a clear indication of a contrary intent in the
2 terms of the trust; and

3 (5) An act done before the effective date of the chapter
4 is not affected by this chapter.

5 (b) If a right is acquired, extinguished, or barred upon
6 the expiration of a prescribed period that has commenced to run
7 under any other statute before the effective date of the
8 chapter, that statute continues to apply to the right even if it
9 has been repealed or superseded."

10 SECTION 3. Section 415A-2, Hawaii Revised Statutes, is
11 amended by amending the definition of "professional service" to
12 read as follows:

13 "'Professional service" means any service [~~which~~] that
14 lawfully may be rendered only by persons licensed under
15 chapters 442, 448, 453, 455, 457, 459, 461, 463E, 465, 466, 471,
16 and 605 [~~, and section 554-2~~]."

17 SECTION 4. Section 554G-4.5, Hawaii Revised Statutes, is
18 amended by amending subsection (c) to read as follows:

19 "(c) Notwithstanding subsection (b), whenever there is a
20 dispute, deadlock, or difference of opinion between a trustee
21 and an advisor, the transferor may direct that the determination



1 of the advisor shall be binding upon the trustee; provided that
2 the trustee shall bear no liability or accountability for any
3 act or transaction entered into or omitted as a result of the
4 enforcement of the advisor's determination. The trustee's
5 administrative and non-administrative fiduciary duty to the
6 beneficiaries shall be waived as to the specific act or
7 transaction entered into or omitted as a result of the
8 enforcement of the advisor's determination; provided that:

9 (1) The trustee dissents in writing:

10 (A) Before the act or transaction is completed;

11 (B) To a failure to act; or

12 (C) In a reasonably timely manner to enter into a

13 transaction; or

14 (2) If the advisor is appointed by the transferor under
15 the terms of the trust and section ~~[560:7-302]~~

16 -808(c) applies to the trust and the advisor, the
17 trustee is not required to dissent in writing for the
18 waiver of the trustee's administrative and
19 ~~[nonadministrative]~~ non-administrative fiduciary
20 duties to the beneficiaries to take effect."



1 SECTION 5. Section 556A-2, Hawaii Revised Statutes, is
2 amended by amending the definition of "court" to read as
3 follows:

4 "Court" means the circuit court in this State having
5 jurisdiction in matters relating to powers of attorney, in the
6 case of a fiduciary or agent acting under a will or power of
7 attorney; a circuit court in this State having jurisdiction in
8 matters relating to the affairs of decedents, in the case of a
9 personal representative; a circuit court in this State having
10 jurisdiction in matters relating to the affairs of decedents or
11 the family court, depending on which court has subject matter
12 jurisdiction under section 560:5-106, in the case of a
13 conservatorship; or a court that has jurisdiction under
14 section [~~560:7-204~~] -202, in the case of a trustee acting
15 under a trust."

16 SECTION 6. Section 560:3-703, Hawaii Revised Statutes, is
17 amended by amending subsection (a) to read as follows:

18 "(a) A personal representative is a fiduciary who shall
19 observe the standards of care applicable to trustees as
20 described by [~~section 560:7-302~~] sections -804, -806, and
21 -808(c). A personal representative is under a duty to settle



1 and distribute the estate of the decedent in accordance with the
2 terms of any probated and effective will and this chapter, and
3 as expeditiously and efficiently as is consistent with the best
4 interests of the estate. The personal representative shall use
5 the authority conferred upon the personal representative by this
6 chapter, the terms of the will, if any, and any order in
7 proceedings to which the personal representative is party for
8 the best interests of successors to the estate."

9 SECTION 7. Section 560:3-913, Hawaii Revised Statutes, is
10 amended by amending subsection (a) to read as follows:

11 "(a) Before distributing to a trustee, the personal
12 representative may require that the trust be registered if the
13 [~~State~~] state in which it is to be administered provides for
14 registration and that the trustee inform the beneficiaries as
15 provided in section [~~560:7-303-~~] -813."

16 SECTION 8. Section 560:8-101, Hawaii Revised Statutes, is
17 amended by amending subsection (b) to read as follows:

18 "(b) Except as provided elsewhere in this chapter, on the
19 effective date of this chapter:

20 (1) The chapter applies to any wills of decedents dying
21 thereafter;



1 (2) The chapter applies to any proceedings in court then
2 pending or thereafter commenced regardless of the time
3 of the death of decedent except to the extent that in
4 the opinion of the court the former procedure should
5 be made applicable in a particular case in the
6 interest of justice or because of infeasibility of
7 application of the procedure of this chapter;

8 (3) Every executor of a will admitted to a probate [~~prior~~
9 ~~to~~] before July 1, 1977, in this State and every
10 administrator appointed [~~prior to~~] before July 1,
11 1977, by a court of this State shall be a supervised
12 personal representative with respect to the estate,
13 and every guardian of the property appointed [~~prior~~
14 ~~to~~] before July 1, 1976, by a court of this State
15 shall be a guardian of the property, with only the
16 powers conferred by this chapter and subject to the
17 duties imposed by this chapter with respect to any act
18 occurring or done thereafter. Every guardian of a
19 person holding an appointment on that date continues
20 to hold the appointment but has only the powers
21 conferred by this chapter and is subject to the duties



1 imposed by this chapter with respect to any act
2 occurring or done thereafter;

3 (4) The consequences of an act done before the applicable
4 effective date in any proceeding and any accrued right
5 is not impaired by this chapter. If a right is
6 acquired, extinguished, or barred upon the expiration
7 of a prescribed period of time which has commenced to
8 run by the provisions of any statute before July 1,
9 1977, the provisions of ~~such~~ the statute shall
10 remain in force with respect to that right;

11 (5) Any rule of construction or presumption provided in
12 this chapter applies to instruments executed and
13 multiple-party accounts opened before July 1, 1976,
14 unless there is a clear indication of a contrary
15 intent; and

16 (6) Notwithstanding any of the above, this chapter shall
17 not affect any property or other rights accrued under
18 the case and statutory law of this State, including
19 but not limited to the law relating to intestacy,
20 dower and curtesy (chapters 532 and 533), which became
21 vested ~~[prior to]~~ before July 1, 1977[+]



~~(7) Section 560:7-501 applies to governing instruments
executed on or after June 24, 2005]. "~~

SECTION 9. Chapter 554A, Hawaii Revised Statutes, is
repealed.

SECTION 10. Chapter 554C, Hawaii Revised Statutes, is
repealed.

SECTION 11. Article VII of chapter 560, Hawaii Revised
Statutes, is repealed.

SECTION 12. Section 554-2, Hawaii Revised Statutes, is
repealed.

~~["§554-2 Nomination by beneficiaries, appointment of
trustees. (a) Whenever any appointment of a trustee under a
private trust is made by any court of record, if, prior to such
appointment, beneficiaries who constitute a majority both in
number and interest of the beneficiaries of the trust (as
hereinafter defined) nominate for the trusteeship by an
instrument or instruments in writing filed in the court any
qualified person or corporation worthy in the opinion of the
court to be appointed, the court shall appoint the nominee as
the trustee, unless the express terms of the trust provide an
effective method of nomination or appointment. No person so~~



1 ~~nominated as trustee by the beneficiaries of any such trust~~
2 ~~shall be held disqualified to be appointed or to act as the~~
3 ~~trustee for the sole reason that the person is a beneficiary or~~
4 ~~a possible beneficiary under the trust estate.~~

5 ~~(b) The term "majority both in number and interest of the~~
6 ~~beneficiaries of the trust," as used in this section, means a~~
7 ~~majority of the competent adult beneficiaries holding more than~~
8 ~~one half of the value of the then vested interests held by all~~
9 ~~the competent adult beneficiaries in the trust, provided that if~~
10 ~~the guardian of any spendthrift, non compos person, or minor,~~
11 ~~owning such a vested interest, when the guardian is not an adult~~
12 ~~beneficiary, or married to an adult beneficiary, of the trust,~~
13 ~~executes or joins in the execution of any instrument of~~
14 ~~nomination and presents the same to the court (each such~~
15 ~~guardian being hereby authorized in the guardian's discretion~~
16 ~~either to execute or to refrain from executing the instrument of~~
17 ~~nomination, as in the guardian's judgment shall be in the best~~
18 ~~interest of the guardian's ward), then the spendthrift, non~~
19 ~~compos person, or minor, and the value of the spendthrift's, non~~
20 ~~compos person's, or minor's interest shall be included in~~
21 ~~determining the majority both in number and interest of the~~



1 ~~beneficiaries of the trust. The value of the then vested~~
2 ~~interests shall be determined as of the date of the presentation~~
3 ~~of the instrument or instruments of nomination to the court, in~~
4 ~~the manner provided for the appraisal of similar interests under~~
5 ~~the laws of the State for inheritance tax purposes and as the~~
6 ~~same would be valued for the purposes if the trust had been~~
7 ~~created by instrument made in contemplation of the death of the~~
8 ~~person who created the trust and the trust had come into~~
9 ~~existence and the death had occurred on the date of presentation~~
10 ~~of the instrument or instruments of nomination. When more than~~
11 ~~one instrument is presented to the court designating the same~~
12 ~~nominee, the date of presentation for the purposes of this~~
13 ~~section shall be deemed to be the date when the last instrument~~
14 ~~is so presented.~~

15 ~~(c) This section applies to trusts created before, as well~~
16 ~~as to those created after April 28, 1943."]~~

17 SECTION 13. Section 554-4, Hawaii Revised Statutes, is
18 repealed.

19 ~~["§554-4 Annual account; trustees to file. Every trustee~~
20 ~~acting under appointment of any court or under any appointment~~
21 ~~requiring the approval of any court, shall, except in cases~~



1 ~~where the prior trustee, if any, was not required by statute or~~
2 ~~the instrument creating the trust or appointing the trustee to~~
3 ~~file such an account, file annually with the court having~~
4 ~~jurisdiction thereof an account showing in detail all receipts~~
5 ~~and disbursements, together with a full and detailed inventory~~
6 ~~of all property in the trustee's possession or under the~~
7 ~~trustee's control; provided that the court in cases in which it~~
8 ~~deems it advisable in the interests of the beneficiaries may~~
9 ~~permit the accounts to be filed biennially or triennially~~
10 ~~instead of annually or, if they are filed annually, may permit~~
11 ~~them to accumulate to be passed upon biennially or triennially;~~
12 ~~and provided further that the court on its own examination or~~
13 ~~that of its clerk, shall, without reference to a master, pass~~
14 ~~upon the accounts in cases in which the annual income does not~~
15 ~~exceed \$1,000, except in the case of a final account when the~~
16 ~~court may refer the same to a master, irrespective of the amount~~
17 ~~of the annual income, if for any reason it is deemed proper or~~
18 ~~necessary. If any such trustee fails to file an account as~~
19 ~~herein required, the clerk of the court in which the trustee is~~
20 ~~required to file the account, shall notify the trustee promptly~~
21 ~~of such failure, and, if the trustee fails to file the account~~



~~within thirty days after such notification, the trustee shall be cited to appear before the court and be required to show cause why the trustee should not be punished for contempt of court as provided by section 710-1077 and the trustee shall be subject to all of the penalties in such section provided. The court may also, in its discretion, remove any such trustee.~~

~~Unless otherwise required by the instrument creating the trust, nothing in this section shall be construed to require the filing of an annual account by a trustee or trustees appointed by the court as additional trustee or trustees to serve with or in the place and stead of a trustee or trustees appointed in the instrument creating a trust, nor by a trustee whose appointment is made in accordance with or pursuant to the instrument creating the trust where such appointment has been confirmed by any court in proceedings brought to secure the confirmation or approval thereof. This provision applies to trusts existing on May 13, 1935, and appointments made thereunder as well as to future trusts."]~~

SECTION 14. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 15. This Act shall take effect on January 1, 2022.

S.B. NO. 385
S.D. 1
H.D. 2
C.D. 1

APPROVED this 07 day of JUN, 2021

A handwritten signature in black ink, appearing to read "David Y. Ige". The signature is fluid and cursive, with a large loop at the end of the last name.

GOVERNOR OF THE STATE OF HAWAII

THE SENATE OF THE STATE OF HAWAI'I

Date: April 27, 2021
Honolulu, Hawaii 96813

We hereby certify that the foregoing Bill this day passed Final Reading in the Senate
of the Thirty-First Legislature of the State of Hawai'i, Regular Session of 2021.


President of the Senate


Clerk of the Senate

SB No. 385, SD 1, HD 2, CD 1

THE HOUSE OF REPRESENTATIVES OF THE STATE OF HAWAII

Date: April 27, 2021
Honolulu, Hawaii

We hereby certify that the above-referenced Bill on this day passed Final Reading in the House of Representatives of the Thirty-First Legislature of the State of Hawaii, Regular Session of 2021.



Scott K. Saiki
Speaker
House of Representatives



Brian L. Takeshita
Chief Clerk
House of Representatives