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# 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



1 trust law that are exceedingly thin or without precedent in  
2 Hawaii.

3 The purpose of this Act is to enact the Uniform Trust Code  
4 (2018 version) in the State, with appropriate amendments to  
5 reflect Hawaii law and practice where relevant.

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

9 **"CHAPTER**

10 **UNIFORM TRUST CODE**

11 **PART I. GENERAL PROVISIONS AND DEFINITIONS**

12 § -101 **Short title.** This chapter may be cited as the  
13 Uniform Trust Code.

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

18 § -103 **Definitions.** As used in this chapter:

19 "Action", with respect to an act of a trustee, includes a  
20 failure to act.



1 "Ascertainable standard" means a standard relating to an  
2 individual's health, education, support, or maintenance within  
3 the meaning of section 2041(b)(1)(A) or 2514(c)(1) of the  
4 Internal Revenue Code of 1986, as in effect on the effective  
5 date of this chapter.

6 "Beneficiary" means a person who:

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

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

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

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

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

17 "Environmental law" means a federal, state, or local law,  
18 rule, regulation, or ordinance relating to protection of the  
19 environment.

20 "Guardian" means a person appointed by the court, a parent,  
21 or a spouse to make decisions regarding the support, care,



1 education, health, and welfare of a minor or adult individual.

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

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

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

18 "Interests of the beneficiaries" means the beneficial  
19 interests provided in the terms of the trust.

20 "Jurisdiction", with respect to a geographic area, includes  
21 a state or country.



1 "Person" means an individual; corporation; business trust;  
2 estate; trust; partnership; limited liability company;  
3 association; joint venture; government; governmental  
4 subdivision, agency, or instrumentality; public corporation; or  
5 any other legal or commercial entity.

6 "Power of withdrawal" means a presently exercisable general  
7 power of appointment other than a power:

- 8 (1) Exercisable by a trustee and limited by an  
9 ascertainable standard; or  
10 (2) Exercisable by another person only upon consent of the  
11 trustee or a person holding an adverse interest.

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

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

- 17 (1) Is a distributee or permissible distributee of trust  
18 income or principal;  
19 (2) Would be a distributee or permissible distributee of  
20 trust income or principal if the interests of the



1 distributees described in paragraph (1) terminated on  
2 that date without causing the trust to terminate; or  
3 (3) Would be a distributee or permissible distributee of  
4 trust income or principal if the trust terminated on  
5 that date.

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

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

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

18 "Spouse" includes individuals who are married to each other  
19 and individuals who are reciprocal beneficiaries.

20 "State" means a state of the United States, the District of  
21 Columbia, Puerto Rico, the United States Virgin Islands, or any



1 territory or insular possession subject to the jurisdiction of  
2 the United States. "State" includes an Indian tribe or band  
3 recognized by federal law or formally acknowledged by a state.

4 "Terms of a trust" means:

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

8 (A) Expressed in the trust instrument; or

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

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

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

15 (B) A court order; or

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

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



1 "Trustee" includes an original, additional, and successor  
2 trustee, and a cotrustee.

3 § -104 **Knowledge.** (a) Subject to subsection (b), a  
4 person has knowledge of a fact if the person:

- 5 (1) Has actual knowledge of it;
- 6 (2) Has received a notice or notification of it; or
- 7 (3) From all the facts and circumstances known to the  
8 person at the time in question, has reason to know it.

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



1 regular duties or the individual knows a matter involving the  
2 trust would be materially affected by the information.

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

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

9 (1) The requirements for creating a trust;

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

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

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



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



1 (12) Periods of limitation for commencing a judicial  
2 proceeding;

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

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

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

13 § -107 **Governing law.** The meaning and effect of the  
14 terms of a trust are determined by:

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

20 (2) In the absence of a controlling designation in the  
21 terms of the trust, the law of the jurisdiction having



1           the most significant relationship to the matter at  
2           issue.

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

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

11           (2) All or part of the administration occurs in the  
12           designated jurisdiction.

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

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



1 (d) The trustee shall notify the qualified beneficiaries  
2 of a proposed transfer of a trust's principal place of  
3 administration no less than sixty days before initiating the  
4 transfer. The notice of proposed transfer shall include:

- 5 (1) The name of the jurisdiction to which the principal  
6 place of administration is to be transferred;
- 7 (2) The address and telephone number at the new location  
8 at which the trustee can be contacted;
- 9 (3) An explanation of the reasons for the proposed  
10 transfer;
- 11 (4) The date on which the proposed transfer is anticipated  
12 to occur; and
- 13 (5) The date, no less than sixty days after the giving of  
14 the notice, by which the qualified beneficiary shall  
15 notify the trustee of an objection to the proposed  
16 transfer.

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



1 (f) In connection with a transfer of the trust's principal  
2 place of administration, the trustee may transfer some or all of  
3 the trust property to a successor trustee designated in the  
4 terms of the trust or appointed pursuant to section -704.

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

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

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



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

3 § -110 **Others treated as qualified beneficiaries.** (a)

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

9 (1) Is a distributee or permissible distributee of trust  
10 income or principal;

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

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

19 (b) A person appointed to enforce a trust created for the  
20 care of an animal or another noncharitable purpose, as provided



1 in section -408 or -409, has the rights of a qualified  
2 beneficiary under this chapter.

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

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

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

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

- 17 (1) The interpretation or construction of the terms of the  
18 trust;
- 19 (2) The approval of a trustee's report or accounting;



1 (3) Direction to a trustee to refrain from performing a  
2 particular act or the grant to a trustee of any  
3 necessary or desirable power;

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

6 (5) Transfer of a trust's principal place of  
7 administration; and

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

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

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

19 § -112 **Rules of construction.** The rules of construction  
20 that apply in this State to the interpretation of and  
21 disposition of property by will also apply, as appropriate, to



1 the interpretation of the terms of a trust and the disposition  
2 of the trust property.

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

9       (1) The insured is:

10           (A) A settlor of the trust; or

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

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

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



1 force and for which an insured is alive on or after the  
2 effective date of this section.

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

6 **PART II. JUDICIAL PROCEEDINGS**

7 **§ -201 Role of court in administration of trust. (a)**

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

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

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

- 16 (1) Appoint or remove a trustee;
- 17 (2) Review or determine a trustee's compensation;
- 18 (3) Review a trustee's report or accounting or compel a  
19 trustee to report or account;
- 20 (4) Ascertain beneficiaries;



1 (5) Determine any question arising in the administration  
2 or distribution of any trust, including questions of  
3 construction of trust terms;

4 (6) Request instructions to trustees; and

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

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

11 § -202 Jurisdiction over trustee and beneficiary. (a)

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

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



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

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

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

12 § -203 **Subject matter jurisdiction.** (a) The court has  
13 exclusive jurisdiction of proceedings in this State concerning  
14 the administration of a trust.

15 (b) The court has concurrent jurisdiction with other  
16 courts of this State of actions and proceedings involving a  
17 trust, including:

18 (1) Proceedings to determine the existence or nonexistence  
19 of trusts created other than by will;

20 (2) Actions by or against creditors or debtors of trusts;

21 and



1 (3) Other actions and proceedings involving trustees and  
2 third parties.

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

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

12 (1) A judicial circuit of this State in which a  
13 beneficiary resides;

14 (2) A judicial circuit in which any trust property is  
15 located;

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

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





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.



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

3 § -401 Methods of creating trust. A trust may be  
4 created by:

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

13 § -402 Requirements for creation. (a) A trust is  
14 created only if:

- 15 (1) The settlor has capacity to create a trust;
- 16 (2) The settlor indicates an intention to create the
- 17 trust;
- 18 (3) The trust has a definite beneficiary or is:
  - 19 (A) A charitable trust;
  - 20 (B) A trust for the care of an animal, as provided in
  - 21 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.





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

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

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

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

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

19 § -703 **Cotrustees.** (a) Cotrustees who are unable to  
20 reach a unanimous decision after consultation among all the  
21 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 and  
7 607-20, 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 (1) A trustee who accepts a trusteeship before the
- 2 effective date of this chapter;
- 3 (2) An irrevocable trust created before the effective date
- 4 of this chapter; or
- 5 (3) A revocable trust that becomes irrevocable before the
- 6 effective date of this chapter.

7 **§ -814 Discretionary powers; tax savings. (a)**

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

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

- 17 (1) A person other than a settlor who is a beneficiary and
- 18 trustee of a trust that confers on the trustee a power
- 19 to make discretionary distributions to or for the
- 20 trustee's personal benefit may exercise the power only
- 21 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 depository 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



- 1 enterprises, tangible and intangible personal  
2 property, and real property;
- 3 (5) The expected total return from income and the  
4 appreciation of capital;
- 5 (6) Other resources of the beneficiaries;
- 6 (7) Needs for liquidity, regularity of income, and  
7 preservation or appreciation of capital; and
- 8 (8) An asset's special relationship or special value, if  
9 any, to the purposes of the trust or to one or more of  
10 the beneficiaries.

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

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

15 **§ -903 Diversification.** A trustee shall diversify the  
16 investments of the trust unless the trustee reasonably  
17 determines that, because of special circumstances or directives  
18 of the trust, the purposes of the trust are better served  
19 without diversifying.

20 **§ -904 Duties at inception of trusteeship.** Within a  
21 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;



1 (9) Subject to section -1012, void an act of the  
2 trustee, impose a lien or a constructive trust on  
3 trust property, or trace trust property wrongfully  
4 disposed of and recover the property or its proceeds;

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

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

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

14 § -1002 Damages for breach of trust. (a) A trustee who  
15 commits a breach of trust is liable to the beneficiaries  
16 affected for the greater of:

17 (1) The amount required to restore the value of the trust  
18 property and trust distributions to what they would  
19 have been had the breach not occurred; or

20 (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.

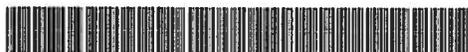
9 (e) Comparable protective provisions of other laws  
10 relating to commercial transactions or transfer of securities by  
11 fiduciaries shall prevail over the protection provided by this  
12 section.

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 section  
14 [~~560:7-204,~~] -202, in the case of a trustee acting under a  
15 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[+]



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

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

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

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

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

11       ~~["**554-2 Nomination by beneficiaries; appointment of**~~  
12 ~~**trustees.**— (a) Whenever any appointment of a trustee under a~~  
13 ~~private trust is made by any court of record, if, prior to such~~  
14 ~~appointment, beneficiaries who constitute a majority both in~~  
15 ~~number and interest of the beneficiaries of the trust (as~~  
16 ~~hereinafter defined) nominate for the trusteeship by an~~  
17 ~~instrument or instruments in writing filed in the court any~~  
18 ~~qualified person or corporation worthy in the opinion of the~~  
19 ~~court to be appointed, the court shall appoint the nominee as~~  
20 ~~the trustee, unless the express terms of the trust provide an~~  
21 ~~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~~



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

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

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

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



**Report Title:**

Judiciary Package; Uniform Trust Code

**Description:**

Enacts the 2018 Uniform Trust Code. Repeals the Uniform Trustees' Powers Act, Uniform Prudent Investor Act, and laws regarding trust administration under the Uniform Probate Code. Effective 1/1/2022. (HD1)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

