



Senate

General Assembly

File No. 493

February Session, 2006

Substitute Senate Bill No. 429

Senate, April 12, 2006

The Committee on Judiciary reported through SEN. MCDONALD of the 27th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT ADOPTING THE CONNECTICUT UNIFORM TRUST CODE.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective January 1, 2007*) Sections 1 to 58,
2 inclusive, of this act may be cited as the "Connecticut Uniform Trust
3 Code".

4 Sec. 2. (NEW) (*Effective January 1, 2007*) Sections 1 to 58, inclusive, of
5 this act apply to express trusts, whether testamentary or inter vivos
6 and whether charitable or noncharitable, and trusts created pursuant
7 to a statute, judgment or decree that requires the trust to be
8 administered in the manner of an express trust.

9 Sec. 3. (NEW) (*Effective January 1, 2007*) As used in sections 1 to 58,
10 inclusive, of this act:

11 (1) "Action", with respect to an act of a trustee, includes a failure to
12 act.

13 (2) "Beneficiary" means a person that (A) has a present or future
14 beneficial interest in a trust, vested or contingent, or (B) in a capacity
15 other than that of trustee, holds a power of appointment over trust
16 property.

17 (3) "Charitable trust" means a trust, or portion of a trust, created for
18 a charitable purpose described in section 18 of this act.

19 (4) "Conservator" means a person appointed by the court to
20 administer the estate of a minor or adult individual and includes a
21 guardian of the estate of a minor.

22 (5) "Environmental law" means a federal, state or local law, rule,
23 regulation or ordinance relating to protection of the environment.

24 (6) "Guardian" means a person appointed by the court to make
25 decisions regarding the support, care, education, health and welfare of
26 a minor or adult individual and includes a conservator of the person of
27 an adult, but does not include a guardian ad litem.

28 (7) "Inter vivos trust" means any trust that is not a testamentary
29 trust.

30 (8) "Jurisdiction", with respect to a geographic area, includes a state
31 or country.

32 (9) "Person" means an individual, corporation, business trust, estate,
33 trust, partnership, limited liability company, association, joint venture,
34 court, government, governmental subdivision, agency or
35 instrumentality, public corporation or any other legal or commercial
36 entity.

37 (10) "Power of withdrawal" means a presently exercisable general
38 power of appointment other than a power exercisable only upon
39 consent of the trustee or a person holding an adverse interest.

40 (11) "Property" means anything that may be the subject of
41 ownership, whether real or personal and whether legal or equitable, or

42 any interest therein.

43 (12) "Revocable", as applied to a trust, means revocable by the
44 settlor without the consent of the trustee or a person holding an
45 adverse interest.

46 (13) "Settlor" means a person, including a testator, who creates or
47 contributes property to a trust. If more than one person creates or
48 contributes property to a trust, each person is a settlor of the portion of
49 the trust property attributable to such person's contribution, except to
50 the extent another person has the power to revoke or withdraw such
51 portion.

52 (14) "Spendthrift provision" means a term of a trust that restrains
53 both voluntary and involuntary transfer of a beneficiary's interest.

54 (15) "State" means a state of the United States, the District of
55 Columbia, Puerto Rico, the United States Virgin Islands or any
56 territory or insular possession subject to the jurisdiction of the United
57 States, and includes an Indian tribe or band recognized by federal law
58 or formally acknowledged by a state.

59 (16) "Testamentary trust" means a trust created under a will or any
60 other trust created, authorized or approved by order of a probate
61 court.

62 (17) "Trust instrument" means an instrument executed by the settlor
63 that contains terms of the trust, including any amendments thereto.

64 (18) "Trustee" includes an original, additional and successor trustee
65 and a cotrustee.

66 Sec. 4. (NEW) (*Effective January 1, 2007*) (a) Subject to subsection (b)
67 of this section, for the purposes of sections 1 to 58, inclusive, of this act,
68 a person has knowledge of a fact if the person (1) has actual
69 knowledge of the fact, (2) has received a notice or notification of the
70 fact, or (3) from all the facts and circumstances known to the person at
71 the time in question, has reason to know the fact.

72 (b) An organization that conducts activities through employees has
73 notice or knowledge of a fact involving a trust only from the time the
74 information was received by an employee having responsibility to act
75 for the trust, or from the time the information would have been
76 brought to the employee's attention if the organization had exercised
77 reasonable diligence. An organization exercises reasonable diligence if
78 it maintains reasonable routines for communicating significant
79 information to the employee having responsibility to act for the trust
80 and there is reasonable compliance with the routines. Reasonable
81 diligence does not require an employee of the organization to
82 communicate information unless the communication is part of the
83 individual's regular duties or the individual knows a matter involving
84 the trust would be materially affected by the information.

85 Sec. 5. (NEW) (*Effective January 1, 2007*) The common law of trusts
86 and principles of equity supplement sections 1 to 58, inclusive, of this
87 act, except to the extent modified by sections 1 to 58, inclusive, of this
88 act or another statute of this state.

89 Sec. 6. (NEW) (*Effective January 1, 2007*) (a) The meaning and effect
90 of the terms of an inter vivos trust are determined by: (1) The law of
91 the jurisdiction designated in the terms of the trust, unless the
92 designation of such jurisdiction's law is contrary to a strong public
93 policy of the jurisdiction having the most significant relationship to the
94 matter at issue; or (2) in the absence of a controlling designation in the
95 terms of the trust, the law of the jurisdiction having the most
96 significant relationship to the matter at issue.

97 (b) The meaning and effect of the terms of a testamentary trust are
98 determined by the law of this state.

99 Sec. 7. (NEW) (*Effective January 1, 2007*) (a) Notice to a person under
100 sections 1 to 58, inclusive, of this act, or the sending of a document to a
101 person under sections 1 to 58, inclusive, of this act, shall be
102 accomplished in a manner reasonably suitable under the circumstances
103 and likely to result in receipt of the notice or document. Permissible
104 methods of notice or for sending a document include first-class mail,

105 personal delivery, delivery to the person's last-known place of
106 residence or place of business, or a properly directed electronic
107 message, if the person has consented in advance to receive notice by
108 electronic message.

109 (b) Notice otherwise required under sections 1 to 58, inclusive, of
110 this act, or a document otherwise required to be sent under sections 1
111 to 58, inclusive, of this act need not be provided to a person whose
112 identity or location is unknown to and not reasonably ascertainable by
113 the trustee.

114 (c) Notice under sections 1 to 58, inclusive, of this act or the sending
115 of a document under sections 1 to 58, inclusive, of this act may be
116 waived by the person to be notified or to be sent the document.

117 (d) Notice of a judicial proceeding shall be given as provided in any
118 applicable court rules.

119 Sec. 8. (NEW) (*Effective January 1, 2007*) (a) By accepting the
120 trusteeship of a trust having its principal place of administration in this
121 state, or by moving the principal place of administration to this state,
122 the trustee submits personally to the jurisdiction of the courts of this
123 state regarding any matter involving the trust.

124 (b) With respect to their interests in the trust, the beneficiaries of a
125 trust having its principal place of administration in this state are
126 subject to the jurisdiction of the courts of this state regarding any
127 matter involving the trust. By accepting a distribution from such a
128 trust, the recipient submits personally to the jurisdiction of the courts
129 of this state regarding any matter involving the trust.

130 (c) This section does not preclude other methods of obtaining
131 jurisdiction over a trustee, beneficiary or other person receiving
132 property from the trust.

133 Sec. 9. (NEW) (*Effective January 1, 2007*) (a) Notice to a person who
134 may represent and bind another person under sections 9 to 13,
135 inclusive, of this act has the same effect as if notice were given directly

136 to such other person.

137 (b) The consent of a person who may represent and bind another
138 person under sections 9 to 13, inclusive, of this act is binding on the
139 person represented unless the person represented objects to the
140 representation before the consent would otherwise have become
141 effective.

142 (c) Except as otherwise provided in section 31 of this act, a person
143 who, pursuant to sections 9 to 13, inclusive, of this act may represent a
144 settlor who lacks capacity may receive notice and give a binding
145 consent on the settlor's behalf.

146 (d) Notwithstanding any provision of the general statutes, sections 9
147 to 13, inclusive, of this act shall apply to all judicial proceedings and all
148 nonjudicial settlements, agreements or acts under sections 1 to 58,
149 inclusive, of this act and under any other provisions of the general
150 statutes pertaining to trust matters.

151 (e) For the purposes of this section, "represent" shall not be
152 construed to permit a person who has not been admitted as an
153 attorney pursuant to section 51-80 of the general statutes to serve as
154 legal counsel for any other person in any matter arising under sections
155 1 to 58, inclusive, of this act.

156 Sec. 10. (NEW) (*Effective January 1, 2007*) To the extent there is no
157 conflict of interest between the holder of a power of appointment and
158 the persons represented with respect to the particular question or
159 dispute: (1) The sole holder or all coholders of any power of
160 appointment, whether or not presently exercisable, shall represent the
161 potential appointees; and (2) the sole holder or all coholders of a power
162 of revocation or a general power of appointment, including one in the
163 form of a power of amendment, shall also represent the takers in
164 default of the exercise thereof.

165 Sec. 11. (NEW) (*Effective January 1, 2007*) To the extent there is no
166 conflict of interest between the representative and the person

167 represented or among those being represented with respect to a
168 particular question or dispute: (1) A conservator may represent and
169 bind the estate that the conservator controls; (2) a guardian may
170 represent and bind the ward if a conservator of the ward's estate has
171 not been appointed; (3) an agent having authority to do so may
172 represent and bind the principal; (4) a trustee may represent and bind
173 the beneficiaries of the trust; (5) an executor or administrator of a
174 decedent's estate may represent and bind persons interested in the
175 estate; and (6) if a conservator or guardian has not been appointed, a
176 parent may represent and bind the parent's minor or unborn child.

177 Sec. 12. (NEW) (*Effective January 1, 2007*) Unless otherwise
178 represented, a minor, an incapacitated or unborn individual, or a
179 person whose identity or location is unknown and not reasonably
180 ascertainable, may be represented by and bound by another person
181 having a substantially identical interest with respect to the particular
182 question or dispute, but only to the extent there is no conflict of
183 interest between the representative and the person being represented.

184 Sec. 13. (NEW) (*Effective January 1, 2007*) (a) If the court determines
185 that an interest is not represented pursuant to sections 9 to 13,
186 inclusive, of this act, or that the otherwise available representation
187 might be inadequate, the court may appoint a guardian ad litem to
188 receive notice, give consent, and otherwise represent, bind and act on
189 behalf of a minor, an incapacitated or unborn individual, or a person
190 whose identity or location is unknown. A guardian ad litem may be
191 appointed to represent several persons or interests.

192 (b) A guardian ad litem may act on behalf of the individual
193 represented with respect to any matter arising under sections 1 to 58,
194 inclusive, of this act, whether or not a judicial proceeding concerning
195 the trust is pending.

196 (c) In making decisions in any matter, a guardian ad litem may
197 consider general benefit accruing to the living members of the
198 individual's family.

199 Sec. 14. (NEW) (*Effective January 1, 2007*) A trust may be created by:
200 (1) Transfer of property to another person as trustee during the
201 settlor's lifetime or by will or other disposition taking effect upon the
202 settlor's death; (2) declaration by the owner of property that the owner
203 holds identifiable property as trustee; or (3) exercise of a power of
204 appointment in favor of a trustee.

205 Sec. 15. (NEW) (*Effective January 1, 2007*) A trust is created only if: (1)
206 The settlor has capacity to create a trust; (2) the settlor indicates an
207 intention to create the trust; (3) the trust has a definite beneficiary or is
208 (A) a charitable trust, or (B) a trust for the care of an animal, as
209 provided in section 21 of this act; and (4) the trustee has duties to
210 perform.

211 Sec. 16. (NEW) (*Effective January 1, 2007*) An inter vivos trust is
212 validly created if its creation complies with the law of the jurisdiction
213 in which the trust instrument was executed, or the law of the
214 jurisdiction in which, at the time of creation: (1) The settlor was
215 domiciled, had a place of abode or was a national; (2) a trustee was
216 domiciled or had a place of business; or (3) any trust property was
217 located.

218 Sec. 17. (NEW) (*Effective January 1, 2007*) A trust may be created only
219 to the extent its purposes are lawful, not contrary to public policy and
220 possible to achieve.

221 Sec. 18. (NEW) (*Effective January 1, 2007*) (a) A charitable trust may
222 be created for the relief of poverty, the advancement of education or
223 religion, the promotion of health, governmental or municipal
224 purposes, or other purposes the achievement of which is beneficial to
225 the community.

226 (b) The settlor of a charitable trust, among others, may maintain a
227 proceeding to enforce the trust.

228 Sec. 19. (NEW) (*Effective January 1, 2007*) A trust is void to the extent
229 its creation was induced by fraud, duress or undue influence.

230 Sec. 20. (NEW) (*Effective January 1, 2007*) Except as required by a
231 statute other than sections 1 to 58, inclusive, of this act, a trust need not
232 be evidenced by a trust instrument, but the creation of an oral trust
233 and its terms may be established only by clear and convincing
234 evidence.

235 Sec. 21. (NEW) (*Effective January 1, 2007*) (a) A trust may be created
236 to provide for the care of an animal alive during the settlor's lifetime.
237 The trust terminates upon the death of the animal or, if the trust was
238 created to provide for the care of more than one animal alive during
239 the settlor's lifetime, upon the death of the last surviving animal.

240 (b) A trust authorized by this section may be enforced by a person
241 appointed in the terms of the trust or, if no person is so appointed, by a
242 person appointed by the court. A person having an interest in the
243 welfare of the animal may request the court to appoint a person to
244 enforce the trust or to remove a person appointed.

245 (c) Property of a trust authorized by this section may be applied
246 only to its intended use, except to the extent the court determines that
247 the value of the trust property exceeds the amount required for the
248 intended use. Except as otherwise provided in the terms of the trust,
249 property not required for the intended use shall be distributed to the
250 settlor, if then living, otherwise to the settlor's successors in interest.

251 Sec. 22. (NEW) (*Effective January 1, 2007*) To achieve the settlor's tax
252 objectives, the court may modify the terms of a trust in a manner that
253 is not contrary to the settlor's probable intention. The court may
254 provide that the modification has retroactive effect.

255 Sec. 23. (NEW) (*Effective January 1, 2007*) To the extent a beneficiary's
256 interest is not protected by a spendthrift provision, the court may
257 authorize a creditor or assignee of the beneficiary to reach the
258 beneficiary's interest by attachment of present or future distributions
259 to or for the benefit of the beneficiary or by other means. The court
260 may limit the award to such relief as is appropriate under the
261 circumstances.

262 Sec. 24. (NEW) (*Effective January 1, 2007*) (a) A spendthrift provision
263 is valid only if it restrains both voluntary and involuntary transfer of a
264 beneficiary's interest.

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

269 (c) A beneficiary may not transfer an interest in a trust in violation
270 of a valid spendthrift provision and, except as otherwise provided in
271 sections 23 to 29, inclusive, of this act, a creditor or assignee of the
272 beneficiary may not reach the interest or a distribution by the trustee
273 before its receipt by the beneficiary.

274 Sec. 25. (NEW) (*Effective January 1, 2007*) (a) For the purposes of this
275 section, "child" includes any person for whom an order or judgment
276 for child support has been entered in this or another state.

277 (b) Even if a trust contains a spendthrift provision, a beneficiary's
278 child, spouse or former spouse who has a judgment or court order
279 against the beneficiary for support or maintenance, or a judgment
280 creditor who has provided services for the protection of a beneficiary's
281 interest in the trust, may obtain from a court an order attaching present
282 or future distributions to or for the benefit of the beneficiary.

283 (c) A spendthrift provision is unenforceable against a claim of this
284 state or the United States to the extent a statute of this state or federal
285 law so provides.

286 Sec. 26. (NEW) (*Effective January 1, 2007*) (a) For the purposes of this
287 section, "child" includes any person for whom an order or judgment
288 for child support has been entered in this or another state.

289 (b) Except as otherwise provided in subsection (c) of this section,
290 whether or not a trust contains a spendthrift provision, a creditor of a
291 beneficiary may not compel a distribution that is subject to the trustee's
292 discretion, even if: (1) The discretion is expressed in the form of a

293 standard of distribution; or (2) the trustee has abused the discretion.

294 (c) To the extent a trustee has not complied with a standard of
295 distribution or has abused a discretion: (1) A distribution may be
296 ordered by the court to satisfy a judgment or court order against the
297 beneficiary for support or maintenance of the beneficiary's child,
298 spouse or former spouse; and (2) the court shall direct the trustee to
299 pay to the child, spouse or former spouse such amount as is equitable
300 under the circumstances, but not more than the amount the trustee
301 would have been required to distribute to or for the benefit of the
302 beneficiary had the trustee complied with the standard or not abused
303 the discretion.

304 (d) This section does not limit the right of a beneficiary to maintain a
305 judicial proceeding against a trustee for an abuse of discretion or
306 failure to comply with a standard for distribution.

307 Sec. 27. (NEW) (*Effective January 1, 2007*) (a) Whether or not the
308 terms of a trust contain a spendthrift provision, the following rules
309 apply:

310 (1) During the lifetime of the settlor, the property of a revocable
311 trust is subject to claims of the settlor's creditors.

312 (2) With respect to an irrevocable trust, a creditor or assignee of the
313 settlor may reach the maximum amount that can be distributed to or
314 for the settlor's benefit. If a trust has more than one settlor, the amount
315 the creditor or assignee of a particular settlor may reach may not
316 exceed the settlor's interest in the portion of the trust attributable to
317 such settlor's contribution.

318 (3) After the death of a settlor, and subject to the settlor's right to
319 direct the source from which liabilities will be paid, except as
320 otherwise provided in section 45a-472 of the general statutes, the
321 property of a trust that was revocable at the settlor's death is subject to
322 claims of the settlor's creditors, costs of administration of the settlor's
323 estate, the expenses of the settlor's funeral and disposal of remains,

324 and the allowance to a surviving spouse or family as provided in
325 section 45a-320 of the general statutes, to the extent the settlor's
326 probate estate is inadequate to satisfy such claims, costs, expenses and
327 allowance.

328 (b) With respect to claims, expenses and taxes in connection with
329 the settlement of a trust that was revocable at the settlor's death, the
330 following rules apply:

331 (1) Any claim of a creditor that would be barred against the
332 fiduciary of a decedent's estate, the estate of the decedent or any
333 creditor or beneficiary of the decedent's estate, shall be barred against
334 the trustee, the trust property and the creditors and beneficiaries of the
335 trust.

336 (2) The trustee may use the optional notice procedures set forth in
337 section 45a-357 of the general statutes and, upon the trustee's
338 compliance with such procedures, any person notified in accordance
339 with said section shall be forever barred from asserting or recovering
340 on any claim such person may have from the trustee, the trust
341 property or any creditor or beneficiary of the trust.

342 (3) The provisions of section 45a-365 of the general statutes
343 concerning the order of payment of claims, expenses and taxes shall
344 apply to the settlement of the revocable trust.

345 (4) If any claim is not presented in writing to the fiduciary of the
346 settlor's estate or the trustee within one hundred fifty days from the
347 date of the appointment of the first fiduciary of the settlor's estate or, if
348 no fiduciary is so appointed, within one hundred fifty days from the
349 date of the settlor's death, no trustee shall be chargeable for any assets
350 that a trustee may have paid or distributed in good faith in satisfaction
351 of any lawful claims, expenses or taxes or to any beneficiary before
352 such claim was presented. A payment or distribution of assets by a
353 trustee shall be deemed to have been made in good faith unless the
354 creditor can prove that the trustee had actual knowledge of such claim
355 at the time of such payment or distribution. Such one-hundred-fifty-

356 day period shall not be interrupted or affected by the death,
357 resignation or removal of a trustee, except that the time during which
358 there is no fiduciary in office shall not be counted as part of such
359 period.

360 (c) For the purposes of this section:

361 (1) During the period a power of withdrawal may be exercised, the
362 holder of the power of withdrawal is treated in the same manner as the
363 settlor of a revocable trust to the extent of the property subject to the
364 power; and

365 (2) Upon the lapse, release or waiver of a power of withdrawal, the
366 holder of the power of withdrawal is treated as the settlor of the trust
367 only to the extent the value of the property affected by the lapse,
368 release or waiver exceeds the greater of the amount specified in Section
369 2041(b)(2), 2503(b) or 2514(e) of the Internal Revenue Code of 1986, or
370 any subsequent corresponding internal revenue code of the United
371 States, as from time to time amended.

372 Sec. 28. (NEW) (*Effective January 1, 2007*) Whether or not a trust
373 contains a spendthrift provision, a creditor or assignee of a beneficiary
374 may reach a mandatory distribution of income or principal, including
375 a distribution upon termination of the trust, if the trustee has not made
376 the distribution to the beneficiary within a reasonable time after the
377 mandated distribution date.

378 Sec. 29. (NEW) (*Effective January 1, 2007*) Trust property is not
379 subject to personal obligations of the trustee, even if the trustee
380 becomes insolvent or bankrupt.

381 Sec. 30. (NEW) (*Effective January 1, 2007*) The capacity required to
382 create, amend, revoke or add property to a revocable trust, or to direct
383 the actions of the trustee of a revocable trust, is the same as that
384 required to make a will.

385 Sec. 31. (NEW) (*Effective January 1, 2007*) (a) Unless the terms of a
386 trust expressly provide that the trust is irrevocable, the settlor may

387 revoke or amend the trust. This subsection does not apply to a trust
388 created under an instrument executed before the effective date of this
389 section.

390 (b) If a revocable trust is created or funded by more than one settlor:
391 (1) To the extent the trust consists of community property, the trust
392 may be revoked by either spouse acting alone, but may be amended
393 only by joint action of both spouses; and (2) to the extent the trust
394 consists of property other than community property, each settlor may
395 revoke or amend the trust with regard to the portion of the trust
396 property attributable to such settlor's contribution.

397 (c) (1) The settlor may revoke or amend a revocable trust by
398 substantial compliance with a method provided in the terms of the
399 trust.

400 (2) If the terms of the trust do not provide a method, or the method
401 provided in the terms is not expressly made exclusive, the settlor may
402 revoke or amend a revocable trust by (A) a later will or codicil that has
403 been admitted to probate and that expressly refers to the trust or
404 expressly devises specifically identified items of real or personal
405 property that would otherwise have passed according to the terms of
406 the trust, or (B) any other method manifesting clear and convincing
407 evidence of the settlor's intent, provided (i) a written revocable trust
408 may only be amended by a later written instrument, and (ii) a written
409 revocable trust may only be revoked by a later written instrument or
410 by the burning, cancellation, tearing or obliteration of the revocable
411 trust by the settlor or by a person in the settlor's presence and at the
412 settlor's direction.

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

415 (e) A trustee who does not know that a trust has been revoked or
416 amended is not liable to the settlor or settlor's successors in interest for
417 distributions made and other actions taken on the assumption that the
418 trust had not been amended or revoked.

419 Sec. 32. (NEW) (*Effective January 1, 2007*) (a) While a trust is
420 revocable and the settlor is alive, rights of the beneficiaries are subject
421 to the control of, and the duties of the trustee are owed exclusively to,
422 the settlor.

423 (b) If a revocable trust has more than one settlor, the duties of the
424 trustee are owed to all of the settlors having capacity to revoke the
425 trust.

426 (c) During the period a power of withdrawal may be exercised, the
427 holder of the power of withdrawal has the rights of a settlor of a
428 revocable trust under this section to the extent of the property subject
429 to the power.

430 Sec. 33. (NEW) (*Effective January 1, 2007*) (a) A person designated as
431 trustee accepts the trusteeship: (1) By substantially complying with a
432 method of acceptance provided in the terms of the trust; (2) if the terms
433 of the trust do not provide a method or the method provided in the
434 terms is not expressly made exclusive, by accepting delivery of the
435 trust property, exercising powers or performing duties as trustee, or
436 otherwise indicating acceptance of the trusteeship; or (3) in the case of
437 a testamentary trust, filing an acceptance of trust in the court with
438 jurisdiction over the trust.

439 (b) A person designated as trustee who has not yet accepted the
440 trusteeship may reject the trusteeship. A designated trustee who does
441 not accept the trusteeship within a reasonable time after knowing of
442 the designation is deemed to have rejected the trusteeship.

443 (c) A testamentary trustee that is a foreign corporation shall also
444 comply with section 45a-206 of the general statutes.

445 Sec. 34. (NEW) (*Effective January 1, 2007*) (a) A trustee shall give
446 bond to secure performance of the trustee's duties only if the court
447 finds that a bond is needed to protect the interests of the beneficiaries
448 or is required by the terms of the trust and the court has not dispensed
449 with the requirement.

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

453 Sec. 35. (NEW) (*Effective January 1, 2007*) (a) Cotrustees who are
454 unable to reach a unanimous decision may act by majority decision.

455 (b) If a vacancy occurs in a cotrusteeship, the remaining cotrustees
456 may act for the trust.

457 (c) A cotrustee shall participate in the performance of a trustee's
458 function unless the cotrustee is unavailable to perform the function
459 because of absence, illness, disqualification under other law or other
460 temporary incapacity or the cotrustee has properly delegated the
461 performance of the function to another trustee.

462 (d) If a cotrustee is unavailable to perform duties because of
463 absence, illness, disqualification under other law or other temporary
464 incapacity, and prompt action is necessary to achieve the purposes of
465 the trust or to avoid injury to the trust property, the remaining
466 cotrustee or a majority of the remaining cotrustees may act for the
467 trust.

468 (e) A trustee may delegate to a cotrustee the performance of any
469 function other than a function that the terms of the trust expressly
470 require to be performed by the trustees jointly. Unless a delegation
471 was irrevocable, a delegating trustee may revoke a delegation
472 previously made.

473 (f) Except as otherwise provided in subsection (g) of this section, a
474 trustee who does not join in an action of another trustee is not liable for
475 the action.

476 (g) Each trustee shall exercise reasonable care to: (1) Prevent a
477 cotrustee from committing a serious breach of trust; and (2) compel a
478 cotrustee to redress a serious breach of trust.

479 (h) A dissenting trustee who joins in an action at the direction of the

480 majority of the trustees and who notified any cotrustee of the dissent at
481 or before the time of the action is not liable for the action unless the
482 action is a serious breach of trust.

483 Sec. 36. (NEW) (*Effective January 1, 2007*) (a) A vacancy in a
484 trusteeship occurs if: (1) A person designated as trustee rejects the
485 trusteeship; (2) a person designated as trustee cannot be identified or
486 does not exist; (3) a trustee resigns; (4) a trustee is disqualified or
487 removed; (5) a trustee dies; or (6) a conservator is appointed for an
488 individual serving as trustee.

489 (b) If one or more cotrustees remain in office, a vacancy in a
490 trusteeship need not be filled, unless otherwise required by the terms
491 of the trust. A vacancy in a trusteeship shall be filled if the trust has no
492 remaining trustee.

493 Sec. 37. (NEW) (*Effective January 1, 2007*) (a) Unless a cotrustee
494 remains in office or the court otherwise orders, and until the trust
495 property is delivered to a successor trustee or other person entitled to
496 it, a trustee who has resigned or been removed has the duties of a
497 trustee and the powers necessary to protect the trust property.

498 (b) A trustee who has resigned or been removed shall proceed
499 expeditiously to deliver the trust property within the trustee's
500 possession to the cotrustee, successor trustee or other person entitled
501 to it.

502 Sec. 38. (NEW) (*Effective January 1, 2007*) (a) If the terms of a trust do
503 not specify the trustee's compensation, a trustee is entitled to
504 compensation that is reasonable under the circumstances.

505 (b) If the terms of a trust specify the trustee's compensation, the
506 trustee is entitled to be compensated as specified, but the court may
507 allow more or less compensation if: (1) The duties of the trustee are
508 substantially different from those contemplated when the trust was
509 created; or (2) the compensation specified by the terms of the trust
510 would be unreasonably low or high.

511 Sec. 39. (NEW) (*Effective January 1, 2007*) (a) A trustee is entitled to
512 be reimbursed out of the trust property, with interest as appropriate,
513 for: (1) Expenses that were properly incurred in the defense or
514 administration of the trust, unless the trustee is determined to have
515 committed a breach of trust; and (2) to the extent necessary to prevent
516 unjust enrichment of the trust, expenses that were not properly
517 incurred in the administration of the trust.

518 (b) An advance by the trustee of money for the protection of the
519 trust gives rise to a lien against trust property to secure reimbursement
520 with reasonable interest.

521 Sec. 40. (NEW) (*Effective January 1, 2007*) Upon acceptance of a
522 trusteeship, the trustee shall administer the trust in good faith, in
523 accordance with its terms and purposes, the intentions of the settlor
524 and the interests of the beneficiaries, and in accordance with sections 1
525 to 58, inclusive, of this act.

526 Sec. 41. (NEW) (*Effective January 1, 2007*) A trustee shall administer
527 the trust as a prudent person would, by considering the purposes,
528 terms, distributional requirements and other circumstances of the
529 trust. In satisfying this standard, the trustee shall exercise reasonable
530 care, skill and caution.

531 Sec. 42. (NEW) (*Effective January 1, 2007*) (a) While a trust is
532 revocable, the trustee may follow a direction of the settlor that is
533 contrary to the terms of the trust.

534 (b) If the terms of a trust confer upon a person other than the settlor
535 of a revocable trust power to direct certain actions of the trustee, the
536 trustee shall act in accordance with an exercise of the power unless the
537 attempted exercise is manifestly contrary to the terms of the trust or
538 the trustee knows the attempted exercise would constitute a serious
539 breach of a fiduciary duty that the person holding the power owes to
540 the beneficiaries of the trust.

541 (c) The terms of a trust may confer upon a trustee or other person a

542 power to direct the modification or termination of the trust.

543 Sec. 43. (NEW) (*Effective January 1, 2007*) A trustee shall take
544 reasonable steps to take control of and protect the trust property.

545 Sec. 44. (NEW) (*Effective January 1, 2007*) (a) A trustee shall keep
546 adequate records of the administration of the trust.

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

549 (c) Except as otherwise provided in subsection (d) of this section, a
550 trustee shall cause the trust property to be designated so that the
551 interest of the trust, to the extent feasible, appears in records
552 maintained by a party other than a trustee or beneficiary.

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

556 Sec. 45. (NEW) (*Effective January 1, 2007*) A trustee shall take
557 reasonable steps to enforce claims of the trust and to defend claims
558 against the trust.

559 Sec. 46. (NEW) (*Effective January 1, 2007*) A trustee shall take
560 reasonable steps to compel a former trustee or other person to deliver
561 trust property to the trustee, and to redress a breach of trust known to
562 the trustee to have been committed by a former trustee.

563 Sec. 47. (NEW) (*Effective January 1, 2007*) (a) Notwithstanding the
564 breadth of discretion granted to a trustee in the terms of the trust,
565 including the use of such terms as "absolute", "sole" or "uncontrolled",
566 the trustee shall exercise a discretionary power in good faith and in
567 accordance with the terms and purposes of the trust, the intentions of
568 the settlor and the interests of the beneficiaries.

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

571 apply: (1) A person, other than a settlor, who is a beneficiary and
572 trustee of a trust that confers on the trustee a power to make
573 discretionary distributions to or for the trustee's personal benefit may
574 exercise the power only in accordance with an ascertainable standard
575 relating to the trustee's individual health, education, support or
576 maintenance within the meaning of Section 2041(b)(1)(A) or 2514(c)(1)
577 of the Internal Revenue Code of 1986, or any subsequent
578 corresponding internal revenue code of the United States, as from time
579 to time amended; and (2) a trustee may not exercise a power to make
580 discretionary distributions to satisfy a legal obligation of support that
581 the trustee personally owes another person.

582 (c) A power to make discretionary distributions, the exercise of
583 which is limited or prohibited by subsection (b) of this section, may be
584 exercised by a majority of the remaining trustees whose exercise of
585 such power is not so limited or prohibited. If the exercise of such
586 power by all trustees is so limited or prohibited, the court may appoint
587 a special fiduciary with authority to exercise such power.

588 (d) Subsection (b) of this section, does not apply to: (1) A power
589 held by the settlor's spouse who is the trustee of a trust for which a
590 marital deduction, as defined in Section 2056(b)(5) or 2523(e) of the
591 Internal Revenue Code of 1986, or any subsequent corresponding
592 internal revenue code of the United States, as from time to time
593 amended, was previously allowed; (2) any trust during any period that
594 the trust may be revoked or amended by its settlor; or (3) a trust, if
595 contributions to the trust qualify for the annual exclusion under
596 Section 2503(c) of the Internal Revenue Code of 1986, or any
597 subsequent corresponding internal revenue code of the United States,
598 as from time to time amended.

599 Sec. 48. (NEW) (*Effective January 1, 2007*) Without limiting the
600 authority conferred by section 47 of this act, a trustee may:

601 (1) Collect trust property and accept or reject additions to the trust
602 property from a settlor or any other person;

603 (2) Acquire or sell property, for cash or on credit, at public or
604 private sale;

605 (3) Exchange, partition or otherwise change the character of trust
606 property;

607 (4) Deposit trust money in an account in a regulated financial
608 service institution;

609 (5) Borrow money, with or without security, and mortgage or
610 pledge trust property for a period within or extending beyond the
611 duration of the trust;

612 (6) With respect to an interest in a proprietorship, partnership,
613 limited liability company, business trust, corporation or other form of
614 business or enterprise, continue the business or other enterprise and
615 take any action that may be taken by shareholders, members or
616 property owners, including merging, dissolving or otherwise changing
617 the form of business organization or contributing additional capital;

618 (7) With respect to stocks or other securities, exercise the rights of an
619 absolute owner, including the right to (A) vote or give proxies to vote,
620 with or without power of substitution, or enter into or continue a
621 voting trust agreement, (B) hold a security in the name of a nominee or
622 in other form without disclosure of the trust so that title may pass by
623 delivery, (C) pay calls, assessments and other sums chargeable or
624 accruing against the securities, and sell or exercise stock subscription
625 or conversion rights, and (D) deposit the securities with a depository
626 or other regulated financial service institution;

627 (8) With respect to an interest in real property, construct or make
628 ordinary or extraordinary repairs to, alterations to or improvements in
629 buildings or other structures, demolish improvements, raze existing or
630 erect new party walls or buildings, subdivide or develop land,
631 dedicate land to public use or grant public or private easements, and
632 make or vacate plats and adjust boundaries;

633 (9) Enter into a lease for any purpose as lessor or lessee, including a

634 lease or other arrangement for exploration and removal of natural
635 resources, with or without the option to purchase or renew, for a
636 period within or extending beyond the duration of the trust;

637 (10) Grant an option involving a sale, lease or other disposition of
638 trust property or acquire an option for the acquisition of property,
639 including an option exercisable beyond the duration of the trust, and
640 exercise an option so acquired;

641 (11) Insure the property of the trust against damage or loss, and
642 insure the trustee, the trustee's agents and beneficiaries against liability
643 arising from the administration of the trust;

644 (12) Abandon or decline to administer property of no value or of
645 insufficient value to justify its collection or continued administration;

646 (13) With respect to possible liability for violation of environmental
647 law, (A) inspect or investigate property the trustee holds or has been
648 asked to hold, or property owned or operated by an organization in
649 which the trustee holds or has been asked to hold an interest, for the
650 purpose of determining the application of environmental law with
651 respect to the property, (B) take action to prevent, abate or otherwise
652 remedy any actual or potential violation of any environmental law
653 affecting property held directly or indirectly by the trustee, whether
654 taken before or after the assertion of a claim or the initiation of
655 governmental enforcement, (C) decline to accept property into trust or
656 disclaim any power with respect to property that is or may be
657 burdened with liability for violation of environmental law, (D)
658 compromise claims against the trust which may be asserted for an
659 alleged violation of environmental law, and (E) pay the expense of any
660 inspection, review, abatement or remedial action to comply with
661 environmental law;

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

664 (15) Pay taxes, assessments, compensation of the trustee and of

665 employees and agents of the trust, and other expenses incurred in the
666 administration of the trust;

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

668 (17) Select a mode of payment under any employee benefit or
669 retirement plan, annuity or life insurance payable to the trustee,
670 exercise rights thereunder, including exercise of the right to
671 indemnification for expenses and against liabilities, and take
672 appropriate action to collect the proceeds;

673 (18) Make loans out of trust property, including loans to a
674 beneficiary on terms and conditions the trustee considers to be fair and
675 reasonable under the circumstances, with the trustee having a lien on
676 future distributions for repayment of such loans;

677 (19) Pledge trust property to guarantee loans made by others to the
678 beneficiary;

679 (20) Appoint a trustee to act in another jurisdiction with respect to
680 trust property located in the other jurisdiction, confer upon the
681 appointed trustee all of the powers and duties of the appointing
682 trustee, require that the appointed trustee furnish security, and remove
683 any trustee so appointed;

684 (21) Pay an amount distributable to a beneficiary who is under a
685 legal disability or who the trustee reasonably believes is incapacitated,
686 by: (A) Paying it directly to the beneficiary or applying it for the
687 beneficiary's benefit; (B) paying it to the beneficiary's conservator; (C)
688 paying it to the beneficiary's custodian under the Uniform Transfers to
689 Minors Act or to the beneficiary's custodial trustee under the Uniform
690 Custodial Trust Act, and, for such purpose, creating a custodianship or
691 custodial trust; (D) if the trustee does not know of a conservator,
692 custodian or custodial trustee, paying it to an adult relative or other
693 person having legal or physical care or custody of the beneficiary, to be
694 expended on the beneficiary's behalf; or (E) managing it as a separate
695 fund on the beneficiary's behalf, subject to the beneficiary's continuing

696 right to withdraw the distribution;

697 (22) On distribution of trust property or the division or termination
698 of a trust, make distributions in divided or undivided interests,
699 allocate particular assets in proportionate or disproportionate shares,
700 value the trust property for such purposes and adjust for resulting
701 differences in valuation;

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

705 (24) Prosecute or defend an action, claim or judicial proceeding in
706 any jurisdiction to protect trust property and the trustee in the
707 performance of the trustee's duties;

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

710 (26) On termination of the trust, exercise the powers appropriate to
711 wind up the administration of the trust and distribute the trust
712 property to the persons entitled to it.

713 Sec. 49. (NEW) (*Effective January 1, 2007*) A violation by a trustee of a
714 duty the trustee owes to a beneficiary is a breach of trust.

715 Sec. 50. (NEW) (*Effective January 1, 2007*) Absent a breach of trust, a
716 trustee is not liable to a beneficiary for a loss or depreciation in the
717 value of trust property or for not having made a profit.

718 Sec. 51. (NEW) (*Effective January 1, 2007*) A report adequately
719 discloses the existence of a potential claim for breach of trust if it
720 provides sufficient information so that the beneficiary or
721 representative knows of the potential claim or should have inquired
722 into its existence.

723 Sec. 52. (NEW) (*Effective January 1, 2007*) A trustee who acts in
724 reasonable reliance on the terms of the trust as expressed in the trust

725 instrument is not liable to a beneficiary for a breach of trust to the
726 extent the breach resulted from the reliance.

727 Sec. 53. (NEW) (*Effective January 1, 2007*) If the happening of an
728 event, including marriage, divorce, performance of educational
729 requirements or death, affects the administration or distribution of a
730 trust, a trustee who has exercised reasonable care to ascertain the
731 happening of the event is not liable for a loss resulting from the
732 trustee's lack of knowledge.

733 Sec. 54. (NEW) (*Effective January 1, 2007*) A trustee is not liable to a
734 beneficiary for breach of trust if the beneficiary consented to the
735 conduct constituting the breach, released the trustee from liability for
736 the breach, or ratified the transaction constituting the breach, unless:
737 (1) The consent, release or ratification of the beneficiary was induced
738 by improper conduct of the trustee; or (2) at the time of the consent,
739 release or ratification, the beneficiary did not know of the beneficiary's
740 rights or of the material facts relating to the breach.

741 Sec. 55. (NEW) (*Effective January 1, 2007*) (a) Except as otherwise
742 provided in the contract, a trustee is not personally liable on a contract
743 properly entered into in the trustee's fiduciary capacity in the course of
744 administering the trust if the trustee in the contract disclosed the
745 fiduciary capacity.

746 (b) A claim based on (1) a contract entered into by a trustee in the
747 trustee's fiduciary capacity, (2) an obligation arising from ownership or
748 control of trust property, or (3) a tort committed in the course of
749 administering a trust, may be asserted in a judicial proceeding against
750 the trustee in the trustee's fiduciary capacity, whether or not the
751 trustee is personally liable for the claim.

752 Sec. 56. (NEW) (*Effective January 1, 2007*) (a) Except as otherwise
753 provided in subsection (c) of this section, or unless personal liability is
754 imposed in the contract, a trustee who holds an interest as a general
755 partner in a general or limited partnership is not personally liable on a
756 contract entered into by the partnership after the trust's acquisition of

757 the interest if the fiduciary capacity was disclosed in the contract or in
758 a statement previously filed pursuant to the Uniform Partnership Act,
759 sections 34-300 to 34-399, inclusive, of the general statutes, or the
760 Uniform Limited Partnership Act, sections 34-9 to 34-38u, inclusive, of
761 the general statutes.

762 (b) Except as otherwise provided in subsection (c) of this section, a
763 trustee who holds an interest as a general partner is not personally
764 liable for torts committed by the partnership or for obligations arising
765 from ownership or control of the interest unless the trustee is
766 personally at fault.

767 (c) The immunity provided by this section does not apply if an
768 interest in the partnership is held by the trustee in a capacity other
769 than that of trustee or is held by the trustee's spouse or one or more of
770 the trustee's descendants, siblings or parents or the spouse of any of
771 them.

772 (d) If the trustee of a revocable trust holds an interest as a general
773 partner, the settlor is personally liable for contracts and other
774 obligations of the partnership as if the settlor were a general partner.

775 Sec. 57. (NEW) (*Effective January 1, 2007*) (a) A person other than a
776 beneficiary who in good faith assists a trustee, or who in good faith
777 and for value deals with a trustee, without knowledge that the trustee
778 is exceeding or improperly exercising the trustee's powers, is protected
779 from liability as if the trustee properly exercised the power.

780 (b) A person other than a beneficiary who in good faith deals with a
781 trustee is not required to inquire into the extent of the trustee's powers
782 or the propriety of their exercise.

783 (c) A person who in good faith delivers assets to a trustee need not
784 ensure their proper application.

785 (d) A person other than a beneficiary who in good faith assists a
786 former trustee, or who in good faith and for value deals with a former
787 trustee, without knowledge that the trustee has terminated, is

788 protected from liability as if the former trustee were still a trustee.

789 (e) Comparable protective provisions of other laws relating to
790 commercial transactions or transfer of securities by fiduciaries prevail
791 over the protection provided by this section.

792 Sec. 58. (NEW) (*Effective January 1, 2007*) (a) Instead of furnishing a
793 copy of the trust instrument to a person other than a beneficiary, the
794 trustee may furnish to the person a certification of trust containing the
795 following information: (1) That the trust exists and the date the trust
796 instrument was executed; (2) the identity of the settlor; (3) the identity
797 and address of the currently acting trustee; (4) the powers of the
798 trustee; (5) the revocability or irrevocability of the trust and the
799 identity of any person holding a power to revoke the trust; (6) the
800 authority of cotrustees to sign or otherwise authenticate, and whether
801 all or less than all are required in order to exercise powers of the
802 trustee; (7) the trust's taxpayer identification number; and (8) the
803 manner of taking title to trust property.

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

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

809 (d) A certification of trust need not contain the dispositive terms of a
810 trust.

811 (e) A recipient of a certification of trust may require the trustee to
812 furnish copies of those excerpts from the original trust instrument and
813 later amendments which designate the trustee and confer upon the
814 trustee the power to act in the pending transaction.

815 (f) A person who acts in reliance upon a certification of trust
816 without knowledge that the representations contained therein are
817 incorrect is not liable to any person for so acting and may assume
818 without inquiry the existence of the facts contained in the certification.

819 (g) A person who in good faith enters into a transaction in reliance
 820 upon a certification of trust may enforce the transaction against the
 821 trust property as if the representations contained in the certification
 822 were correct.

823 (h) A person making a demand for the trust instrument in addition
 824 to a certification of trust or excerpts is liable for damages if the court
 825 determines that the person did not act in good faith in demanding the
 826 trust instrument.

827 (i) This section does not limit the right of a person to obtain a copy
 828 of the trust instrument in a judicial proceeding concerning the trust.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>January 1, 2007</i>	New section
Sec. 2	<i>January 1, 2007</i>	New section
Sec. 3	<i>January 1, 2007</i>	New section
Sec. 4	<i>January 1, 2007</i>	New section
Sec. 5	<i>January 1, 2007</i>	New section
Sec. 6	<i>January 1, 2007</i>	New section
Sec. 7	<i>January 1, 2007</i>	New section
Sec. 8	<i>January 1, 2007</i>	New section
Sec. 9	<i>January 1, 2007</i>	New section
Sec. 10	<i>January 1, 2007</i>	New section
Sec. 11	<i>January 1, 2007</i>	New section
Sec. 12	<i>January 1, 2007</i>	New section
Sec. 13	<i>January 1, 2007</i>	New section
Sec. 14	<i>January 1, 2007</i>	New section
Sec. 15	<i>January 1, 2007</i>	New section
Sec. 16	<i>January 1, 2007</i>	New section
Sec. 17	<i>January 1, 2007</i>	New section
Sec. 18	<i>January 1, 2007</i>	New section
Sec. 19	<i>January 1, 2007</i>	New section
Sec. 20	<i>January 1, 2007</i>	New section
Sec. 21	<i>January 1, 2007</i>	New section
Sec. 22	<i>January 1, 2007</i>	New section
Sec. 23	<i>January 1, 2007</i>	New section
Sec. 24	<i>January 1, 2007</i>	New section

Sec. 25	<i>January 1, 2007</i>	New section
Sec. 26	<i>January 1, 2007</i>	New section
Sec. 27	<i>January 1, 2007</i>	New section
Sec. 28	<i>January 1, 2007</i>	New section
Sec. 29	<i>January 1, 2007</i>	New section
Sec. 30	<i>January 1, 2007</i>	New section
Sec. 31	<i>January 1, 2007</i>	New section
Sec. 32	<i>January 1, 2007</i>	New section
Sec. 33	<i>January 1, 2007</i>	New section
Sec. 34	<i>January 1, 2007</i>	New section
Sec. 35	<i>January 1, 2007</i>	New section
Sec. 36	<i>January 1, 2007</i>	New section
Sec. 37	<i>January 1, 2007</i>	New section
Sec. 38	<i>January 1, 2007</i>	New section
Sec. 39	<i>January 1, 2007</i>	New section
Sec. 40	<i>January 1, 2007</i>	New section
Sec. 41	<i>January 1, 2007</i>	New section
Sec. 42	<i>January 1, 2007</i>	New section
Sec. 43	<i>January 1, 2007</i>	New section
Sec. 44	<i>January 1, 2007</i>	New section
Sec. 45	<i>January 1, 2007</i>	New section
Sec. 46	<i>January 1, 2007</i>	New section
Sec. 47	<i>January 1, 2007</i>	New section
Sec. 48	<i>January 1, 2007</i>	New section
Sec. 49	<i>January 1, 2007</i>	New section
Sec. 50	<i>January 1, 2007</i>	New section
Sec. 51	<i>January 1, 2007</i>	New section
Sec. 52	<i>January 1, 2007</i>	New section
Sec. 53	<i>January 1, 2007</i>	New section
Sec. 54	<i>January 1, 2007</i>	New section
Sec. 55	<i>January 1, 2007</i>	New section
Sec. 56	<i>January 1, 2007</i>	New section
Sec. 57	<i>January 1, 2007</i>	New section
Sec. 58	<i>January 1, 2007</i>	New section

JUD *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact: None

Municipal Impact: None

Explanation

The bill establishes a number of rules governing trusts which have no fiscal impact.

The Out Years

State Impact: None

Municipal Impact: None

OLR Bill Analysis**sSB 429*****AN ACT ADOPTING THE CONNECTICUT UNIFORM TRUST CODE.*****SUMMARY:**

This bill establishes numerous rules regarding creating, modifying, terminating, and enforcing trusts. A trust, generally speaking, is an arrangement in which one person, called the trustee, holds money or other property for the benefit of another person, called the beneficiary, to whom the trustee owes certain duties with regard to safeguarding, managing, and disposing of the trust property and income according to the terms of the trust. The person who creates the trust is called the settlor.

The bill recognizes oral trusts. But it requires that the creation and terms of an oral trust be established by clear and convincing evidence.

The bill authorizes trusts for the care of animals, by allowing the settlor or court to appoint a person to enforce the trust. The trust may benefit only animals alive at the settlor's death. Under current law, trusts for animals are simply honorary ones, because animal beneficiaries cannot enforce them.

It specifies the rights of creditors in connection with spendthrift and discretionary trusts. For example, under the bill, whether or not the trust contains a spendthrift provision, the property of a revocable trust is subject to claims of the settlor's creditors during the settlor's lifetime.

It establishes several rules regarding revocable trusts, including the mental capacity a person needs to establish one, and the right to revoke or amend one.

The bill establishes numerous rules concerning the position of trustee. These include such areas as how to accept or decline a trusteeship, co-trustees; appointment of a successor trustee, and compensation and reimbursement.

The bill contains numerous rules concerning the duties and powers of trustees. These include the duty to take reasonable steps to take control of and protect the trust property, keep adequate records, enforce trust claims and defend claims against the trust, and exercise discretionary powers in good faith and in accordance with the trust's terms and purposes.

The bill establishes various rules regarding the liability of trustees and the rights of people dealing with a trustee. For example, as long as he did not commit a breach, a trustee is not liable to a beneficiary for a loss or depreciation in the value of trust property or for not having made a profit; a trustee is not liable to a beneficiary for a breach of trust for acting in reasonable reliance on the terms of the trust as expressed in the trust instrument; and a trustee who has exercised reasonable care to ascertain the happening of an event that affects the administration or distribution of a trust is not liable for a loss resulting from his lack of knowledge.

EFFECTIVE DATE: January 1, 2007

GENERAL PROVISIONS

§ 2-3 - Scope

This bill applies to express trusts, whether testamentary or inter vivos, charitable or noncharitable, and trusts created by a statute, judgment, or decree that requires the trust to be administered as an express trust. A "testamentary trust" means a trust created under a will and any other trust created, authorized or approved by order of a probate court. An "inter vivos trust" means any trust that is not a testamentary trust. A "charitable trust" means a trust, or portion of a trust, created for a charitable purpose.

§ 4 - Knowledge

Under the bill, a person has knowledge of a fact if he has: (1) actual knowledge of it, (2) received a notice or notification of it, or (3) reason to know it from all the facts and circumstances he knows at the time in question.

Under the bill, an organization that conducts activities through employees has notice or knowledge of a fact involving a trust only from the time an employee having responsibility to act for the trust received it, or it would have been brought to the employee's attention if the organization had exercised reasonable diligence. An organization exercises reasonable diligence if it maintains reasonable routines for communicating significant information to the employee having responsibility to act for the trust and there is reasonable compliance with the routines. Reasonable diligence does not require an employee to communicate information unless the communication is part of his regular duties or he knows a matter involving the trust would be materially affected by the information.

§ 5 - Common Law of Trusts; Principles of Equity

The bill specifies that the common law (judge-made law) of trusts and principles of equity supplement it, except to the extent the bill or a statute modify the common law or equity principles.

§ 6 - Governing Law

The bill provides rules to determine the law that will govern the meaning and effect of the terms of a trust.

It requires that the meaning and effect of the terms of an inter vivos trust be determined by (1) the law of the jurisdiction the trust designates unless the designation is contrary to a strong public policy of the jurisdiction having the most significant relationship to the matter at issue or (2) in the absence of a controlling designation in the trust, the law of the jurisdiction having the most significant relationship to the matter at issue.

The bill requires Connecticut law to determine the meaning and effect of the terms of a testamentary trust.

§ 7 - Methods and Waiver of Notice

The bill requires that notice to someone, or sending a document to someone, must be accomplished in a manner reasonably suitable under the circumstances and likely to result in its receipt. The bill specifies that permissible methods of notice or sending a document include first-class mail; personal delivery; delivery to the person's last-known place of residence or place of business; or a properly directed electronic message, if the person has consented in advance to receive notice by electronic message.

The bill also specifies that a notice or document the bill requires to be sent does not have to be provided to someone whose identity or location is unknown to, and not reasonably ascertainable by, the trustee.

The bill allows the person to be notified or sent a document to waive his right but notice of a judicial proceeding must be given as provided in any applicable court rules.

§ 8 - JURISDICTION OVER TRUSTEE AND BENEFICIARY

Under the bill, the trustee submits personally to the jurisdiction of Connecticut's courts regarding any matter involving the trust by (1) accepting the trusteeship of a trust having its principal place of administration in this state or (2) moving the principal place of administration to this state.

The bill specifies that beneficiaries of a trust having its principal place of administration in Connecticut are subject to the jurisdiction of Connecticut's courts regarding any trust matter. By accepting a distribution from such a trust, the recipient submits personally to the court's jurisdiction regarding any trust matter.

The bill specifies that it does not prevent other methods of obtaining jurisdiction over a trustee, beneficiary, or other person receiving property from the trust.

CREATION, VALIDITY, MODIFICATION, AND TERMINATION OF TRUST**§ 14 - Methods of Creating a Trust**

The bill specifies that a trust is created by:

1. transfer of property to someone else during the settlor's lifetime, or by will or other disposition that takes effect upon the settlor's death;
2. declaration by the property owner that he holds identifiable property as trustee; or
3. exercise of a power of appointment in favor of a trustee.

A power of appointment is the authority a property owner grants to someone (donee) to designate the person or people who are to receive the property when the owner or the donee dies or when some other interest in the property terminates.

§ 15 - Requirements for Creating a Trust

Under the bill, a trust is created only if:

1. the settlor has capacity to create it;
2. the settlor indicates an intention to create it;
3. the trustee has duties to perform; and
4. the trust has a definite beneficiary or is a charitable trust or trust for the care of an animal as the bill provides.

§ 16 - Trusts Created in Other Jurisdictions

Under the bill, an inter vivos trust is validly created if its creation complies with either the law of the jurisdiction in which it was executed, or the law of the jurisdiction in which, at the time the trust was created:

1. the settlor was domiciled, had a dwelling place, or was a national;

2. a trustee was domiciled or had a business place; or
3. any trust property was located.

Domicile is where a person has his permanent and primary residence or where a corporation or some other business entity has its headquarters or principal place of business.

§ 17 - Trust Purposes

The bill allows a trust to be created only to the extent its purposes are lawful, not contrary to public policy, and possible to achieve.

§ 18 - Charitable Purposes; Enforcement

The bill authorizes a charitable trust to be created for the relief of poverty; the advancement of education or religion; the promotion of health, governmental, or municipal purposes; or other purposes that benefit the community.

The bill gives the settler of a charitable trust the right to enforce it in court.

§ 19 - Creation of Trust Induced by Fraud, Duress, or Undue influence

The bill makes a trust void to the extent its creation was induced by fraud, duress, or undue influence.

§ 20 - Evidence of Oral Trust

The bill specifies that unless another statute requires otherwise, a trust does not have to be evidenced by a trust instrument. Thus, the bill contemplates the possibility of oral trusts. But it requires that the creation of an oral trust and its terms may be established only by clear and convincing evidence.

§ 21 - Trust for Care of Animal

The bill allows a trust to be created to provide for the care of an animal alive during the settlor's lifetime. The trust must terminate when the animal dies. If the trust was created to provide for the care

of more than one animal, it terminates when the last surviving animal dies.

A person appointed in the trust may enforce it. The bill allows a court to appoint someone if the trust does not. It allows a person having an interest in the animal's welfare to ask the court to appoint a person to enforce the trust or to remove a person appointed.

The bill specifies that trust property authorized to care for an animal may be applied only for its intended use, except to the extent the court determines that the trust's value exceeds the amount required for the intended use. Except as otherwise provided in the trust, property not required for the intended use must be distributed to the settlor, if living. Otherwise, it must be distributed to the settlor's successors in interest.

§ 22 - Modification to Achieve Settlor's Tax Objectives

The bill authorizes a court to modify the terms of a trust to achieve the settlor's tax objectives in a manner that is not contrary to the settlor's probable intention. The court may provide that the modification has retroactive effect.

CREDITOR'S CLAIMS; SPENDTHRIFT AND DISCRETIONARY TRUSTS

§ 23 - Rights of Beneficiary's Creditor or Assignee

A spendthrift trust is a trust created to provide some income to a beneficiary while preventing both the beneficiary and his creditors from having access to the trust money or property except to the extent the trustee pays it out to the beneficiary.

If a beneficiary's interest is not protected by a spendthrift provision, the bill empowers the court to authorize a beneficiary's creditor or assignee to reach the beneficiary's interest by attaching present or future distributions to, or for the benefit of, the beneficiary or by other means. The court may limit the extent to which a beneficiary or creditor may do so as appropriate under the circumstances.

§ 24 - Spendthrift Provision

The bill specifies that a spendthrift provision is valid only if it restrains both voluntary and involuntary transfers of a beneficiary's interest.

It also specifies that a term of a trust providing that the interest of a beneficiary is held subject to a "spendthrift trust," or words of similar meaning, is sufficient to restrain both a voluntary and an involuntary transfer of the beneficiary's interest.

The bill prohibits a beneficiary from transferring an interest in a trust in violation of a valid spendthrift provision. It also prohibits, except as otherwise provided in the bill, a beneficiary's creditor or assignee from reaching the interest or a distribution by the trustee before the beneficiary receives it.

§ 25 - Exceptions to Spendthrift Provision

Even if a trust contains a spendthrift provision, the bill allows the following people to obtain a court order attaching present and future distributions: (1) a beneficiary's child, spouse, or former spouse who has a judgment or court order for support or maintenance or (2) a judgment creditor who has provided services for the protection of a beneficiary's interest in the trust. The term "child" includes any person for whom an order or judgment for child support has been entered in this or another state. The bill also makes a spendthrift provision unenforceable against a claim of this state or the United States to the extent a statute of this state or federal law so provides.

§ 26 - Discretionary Trusts; Effect of Standard

Under the bill, whether or not a trust contains a spendthrift provision, a creditor of a beneficiary may not compel a distribution that is subject to the trustee's discretion, even if (1) the discretion is expressed in the form of a standard of distribution or (2) the trustee has abused the discretion.

But if a trustee has not complied with a distribution standard or has abused a discretion:

1. the court may order a distribution to satisfy a judgment or court order against the beneficiary for support or maintenance of the beneficiary's child, spouse, or former spouse; and
2. the court must direct the trustee to pay to the child, spouse, or former spouse an amount as is equitable under the circumstances but not more than the amount the trustee would have been required to distribute to or for the benefit of the beneficiary had the trustee complied with the standard or not abused the discretion.

The bill also specifies that it does not limit a beneficiary's right to maintain a judicial proceeding against a trustee for an abuse of discretion or failure to comply with a standard for distribution.

§ 27 - Creditor's Claim Against Settlor

Under the bill, whether or not the trust contains a spendthrift provision, the property of a revocable trust is subject to claims of the settlor's creditors during the settlor's lifetime.

With respect to an irrevocable trust, a settlor's creditor or assignee may reach the maximum amount that can be distributed to the settlor or for the settlor's benefit. If a trust has more than one settlor, the amount the creditor or assignee of a particular settlor may reach cannot exceed the settlor's interest in the portion of the trust attributable to that settlor's contribution.

After the settlor's death, and subject to his right to direct the source from which liabilities will be paid, except as otherwise provided by law (see CGS § 45a-472), the property of a trust that was revocable at the settlor's death is subject to claims of his creditors, costs of administering his estate, the expenses of his funeral and disposal of remains, and the family allowance to a surviving spouse and children as provided by law (see CGS § 45a-320), to the extent the settlor's probate estate is inadequate to satisfy those claims, costs, expenses, and allowance.

With respect to claims, expenses, and taxes regarding the settlement of a trust that was revocable at the settlor's death, any creditor's claim, which would be barred against the fiduciary of a decedent's estate, the estate of the decedent, or any creditor or beneficiary of the decedent's estate, is barred against the trustee, the trust property, and the trust's creditors and beneficiaries.

The bill authorizes a trustee to use the optional notice procedures (CGS § 45a-357) for creditors in connection with decedent's estates. Generally, the optional procedures allow a fiduciary at any time to give notice to anyone he has reason to believe may have a claim. The notice gives such creditors 90 days from the date he receives notice from the fiduciary to make a claim. Upon the trustee's compliance with these procedures, any person so notified is barred from asserting or recovering on any claim from the trustee, the trust property, or any creditor or beneficiary of the trust.

The bill establishes the same preference and order of payment of claims, expenses, and taxes for a revocable trust as apply to a decedent's estate (see CGS § 45a-365).

If any claim is not presented in writing to the fiduciary of the settlor's estate or the trustee (1) within 150 days from the date of the appointment of the first fiduciary of the settlor's estate or (2) if no fiduciary is appointed within 150 days from the settlor's date of death, then within 150 days from the settlor's death, no trustee may be chargeable for any assets that a trustee may have paid or distributed in good faith in satisfaction of any lawful claims, expenses, or taxes or to any beneficiary before the claim was presented. A payment or distribution of assets by a trustee is deemed to have been made in good faith unless the creditor can prove that the trustee knew about the claims when making the payment or distribution. The 150-day period may not be interrupted or affected by a trustee's death, resignation, or removal. But the time during which there is no fiduciary in office may not be counted as part of the period.

During the period the power may be exercised, the holder of a power of withdrawal is treated in the same manner as the settlor of a revocable trust to the extent of the property that is subject to the power.

Upon the lapse, release, or waiver of the power, the holder is treated as the settlor of the trust only to the extent the value of the property affected by the lapse, release, or waiver exceeds the greater of the amount specified in the federal tax code (see §§ 2041(b)(2), 2514(e), 2503(b) of the Internal Revenue Code).

§ 28 - Overdue Distribution

Whether or not a trust contains a spendthrift provision, a beneficiary's creditor or assignee may reach a mandatory distribution of income or principal, including a distribution upon termination of the trust, if the trustee has not made the distribution to the beneficiary within a reasonable time after the mandated distribution date.

§ 29 - Personal Obligations of Trustee

The bill specifies that trust property is not subject to the trustee's personal obligations, even if the trustee becomes insolvent or bankrupt.

REVOCABLE TRUSTS

§ 30 - Capacity of Settlor of Revocable Trust

The bill specifies that the capacity a person needs to create, amend, revoke, or add property to a revocable trust, or to direct the actions of the trustee of a revocable trust, is the same as the capacity to make a will. To make a will, a person must be of sound mind. (Apparently, under current law, a person must have the capacity to make a contract in order to create a revocable trust.)

§ 31 - Revocation or Amendment of Revocable Trust

The bill gives the settlor the right to revoke or amend a trust unless the trust expressly provides that the trust is irrevocable. But this right

does not apply to a trust created under an instrument executed before January 1, 2007. If more than one settlor creates or funds a revocable trust:

1. to the extent the trust consists of community property, either spouse may revoke the trust but they may amend it only by joint action; and
2. to the extent the trust consists of property other than community property, each settlor may revoke or amend the trust with regard to the portion of the trust property attributable to that settlor's contribution.

The bill allows a settlor to revoke or amend a revocable trust by substantial compliance with a method the trust provides. If the terms of the trust do not provide a method, or the method provided is not expressly made exclusive, a settlor may revoke or amend it by (1) a later will or codicil that has been admitted to probate and that expressly refers to the trust or expressly devises specifically identified items of real or personal property that would otherwise have passed according to the terms of the trust or (2) any other method showing clear and convincing evidence of the settlor's intent.

But, a written revocable trust may only be amended by a later written instrument. It may only be revoked by a later written instrument or by the settlor or some person in his presence and at his direction burning, canceling, tearing, or obliterating the revocable trust instrument. When a revocable trust is revoked, the trustee must deliver the trust property as the settlor directs.

A trustee who does not know that a trust has been revoked or amended is not liable to the settlor or his successors for distributions he makes and other actions he takes on the assumption that the trust had not been amended or revoked.

§ 32 - Settlor's Powers; Powers of Withdrawal

Under the bill, while a trust is revocable and the settlor is alive, the

beneficiaries' rights are subject to the settlor's control, and the duties of the trustee are owed exclusively to the settlor. If a revocable trust has more than one settlor, the trustee's duties are owed to all of the settlors having capacity to revoke the trust.

During the period the power may be exercised, the holder of a power of withdrawal has the rights of a settlor of a revocable trust with respect to the property subject to the power. A power of withdrawal is a general power of appointment that can be exercised without the consent of the trustee or someone who holds an adverse interest. A power of appointment is the authority granted by a property owner to designate the person or people who are to receive the property when an event occurs.

OFFICE OF TRUSTEE

§ 33 - *Accepting or Declining Trusteeship*

Under the bill, a person designated as trustee accepts the trusteeship of a non-testamentary trust by substantially complying with a method of acceptance provided in the trust. If the trust does not provide a method, or the method provided is not expressly made exclusive, he does so by accepting delivery of the trust property, exercising powers or performing duties as trustee, or otherwise indicating acceptance of the trusteeship. A person accepts the trusteeship of a testamentary trust by filing an acceptance of trust in the court with jurisdiction over it.

The bill allows a person designated as trustee who has not yet accepted the trusteeship to reject it. Under the bill, a designated trustee who does not accept the trusteeship within a reasonable time after knowing of the designation is deemed to have rejected it.

Testamentary trustees that are foreign corporations must also comply with the law requiring them to appoint an agent for service of process (see CGS § 45a-206).

§ 34 - *Trustee's Bond*

The bill requires the trustee to give a bond to secure performance of

his duties only if the court finds that a bond is needed to protect the beneficiaries' interests or the trust requires it and the court has not dispensed with the requirement.

The bill authorizes the court to specify the amount of a bond, its liabilities, and whether sureties are necessary. It also allows the court to modify or terminate a bond at any time.

§ 35 - Co-Trustees

The bill allows co-trustees to act by majority decision. It allows the remaining co-trustees to act for the trust if a vacancy occurs in a co-trusteeship.

It requires a co-trustee to participate in the performance of a trustee's function unless he is unavailable to perform because of absence, illness, disqualification under other law, other temporary incapacity, or proper delegation of the function to another trustee.

Under the bill, if a co-trustee is unavailable to perform duties because of absence, illness, disqualification under other law, or other temporary incapacity, and prompt action is necessary to achieve the trust's purposes or to avoid injury to trust property, the remaining co-trustee, or a majority of the remaining co-trustees, may act for the trust.

The bill authorizes a trustee to delegate to a co-trustee the performance of any function other than a function that the trust expressly requires to be performed by the trustees jointly. A trustee may revoke a delegation unless the delegation was irrevocable.

A trustee who does not join in an action of another trustee is not liable for the action. But the bill requires each trustee to exercise reasonable care to (1) prevent a co-trustee from committing a serious breach of trust and (2) compel a co-trustee to redress a serious breach of trust.

Under the bill, a dissenting trustee who joins in an action at the direction of the majority of the trustees and who notified any co-trustee of the dissent at or before the time of the action is not liable for the action unless the action is a serious breach of trust.

§ 36 - Vacancy in Trusteeship; Appointment of Successor

Under the bill, a vacancy in a trusteeship occurs if a person designated as trustee (1) rejects the trusteeship, (2) cannot be identified or does not exist, (3) resigns, (4) is disqualified or removed, (5) dies, or (6) has a conservator appointed.

Unless the trust requires it, if one or more co-trustees remain in office, a vacancy in a trusteeship need not be filled. But a vacancy in a trusteeship must be filled if the trust has no remaining trustee.

§ 37 - Delivery of Property by former Trustee

The bill specifies that a trustee who has resigned or been removed still has the duties of a trustee and the powers necessary to protect the trust property unless a co-trustee remains in office or the court orders otherwise. He has these powers and duties until the trust property is delivered to a successor trustee or other person entitled to it.

The bill requires a trustee who has resigned or been removed to proceed expeditiously to deliver the trust property within his possession to the co-trustee, successor trustee, or other person entitled to it.

§ 38 - Compensation of Trustee

The bill gives a trustee the right to compensation that is reasonable under the circumstances if the trust does not specify the compensation.

Under the bill, if a trust specifies the trustee's compensation, the trustee is entitled to that compensation. But the bill empowers the court to allow more or less compensation if:

1. the trustee's duties are substantially different from those

contemplated when the trust was created or

2. the compensation specified by the trust would be unreasonably low or high.

§ 39 - Reimbursement of Expenses

The bill gives a trustee the right to be reimbursed out of the trust property, with interest, for expenses that were:

1. properly incurred in the defense or administration of the trust, unless the trustee is determined to have committed a breach of trust, and
2. not properly incurred in the administration of the trust, to the extent necessary to prevent unjust enrichment of the trust.

Under the bill, an advance by the trustee of money to protect the trust creates a lien against the trust property to secure reimbursement with reasonable interest.

DUTIES AND POWERS OF TRUSTEE

§ 40 - Duty to Administer Trust

The bill requires the trustee, once he accepts a trusteeship, to administer it in good faith, according to its terms and purposes, the intentions of the settlor and the interests of the beneficiaries and in accordance with the bill.

§ 41 - Prudent Administration

The bill requires the trustee to administer the trust as a prudent person would, by considering the trust's purposes, terms, distribution requirements, and other circumstances. In satisfying this standard, the trustee must exercise reasonable care, skill, and caution.

§ 42 - Powers to Direct

While a trust is revocable, the bill authorizes a trustee to follow the settlor's directions that are contrary to the terms of the trust.

If the terms of a revocable trust give a person other than the settlor

a power to direct certain actions of the trustee, the trustee must act in accordance with an exercise of the power unless (1) the attempted exercise is manifestly contrary to the terms of the trust or (2) the trustee knows the attempted exercise would constitute a serious breach of a fiduciary duty that the person holding the power owes to the trust's beneficiaries.

The bill allows the terms of a trust to confer upon a trustee or other person a power to direct the modification or termination of the trust.

§ 43 - Control and Protection of Trust Property

The bill requires a trustee to take reasonable steps to take control of and protect the trust property.

§ 44 - Record Keeping and Identification of Trust Property

The bill requires the trustee to (1) keep adequate records of the administration of the trust, (2) keep trust property separate from the trustee's own property, and (3) cause the trust property to be designated so that the interest of the trust, to the extent feasible, appears in records maintained by someone other than a trustee or beneficiary.

The bill authorizes a trustee to invest as a whole the property of two or more separate trusts, if he maintains records clearly indicating the respective interests.

§ 45 - Enforcement and Defense of Claims

The bill requires a trustee to take reasonable steps to enforce trust claims and to defend claims against the trust.

§ 46 - Collecting Trust Property

The bill requires a trustee to take reasonable steps to compel a former trustee or other person to deliver trust property to the trustee, and to redress a breach of trust he knows a former trustee has committed.

§ 47 - Discretionary Powers; Tax Savings

The bill requires the trustee to exercise a discretionary power in good faith and in accordance with the trust's terms and purposes, the settlor's intentions, and the beneficiaries' interests. The bill specifies that this requirement applies regardless of the breadth of discretion the trust grants the trustee in the terms of the trust, including the use of such terms as "absolute," "sole," or "uncontrolled."

Unless the terms of the trust expressly provides otherwise:

1. a person, other than a settlor, who is a beneficiary and trustee of a trust that confers on the trustee a power to make discretionary distributions to the trustee, or for the trustee's personal benefit, may exercise the power only in accordance with an ascertainable standard relating to the trustee's health, education, support, or maintenance within the meaning established in the federal estate and gift tax rules; and
2. a trustee may not exercise a power to make discretionary distributions to satisfy a legal obligation of support that the trustee personally owes another person.

A power whose exercise is limited or prohibited as described above, may be exercised by a majority of the remaining trustees whose exercise of the power is not so limited or prohibited. If the power of all trustees is so limited or prohibited, the court may appoint a special fiduciary with authority to exercise the power.

These limitations and prohibitions do not apply to:

1. a power held by the settlor's spouse who is the trustee of a trust for which a marital deduction, as defined in the federal estate and gift tax rules (see §§ 2056(b)(5) or 2523(e) of the Internal Revenue Code) was previously allowed;
2. any trust during any period that the settler may revoke or amend it; or

3. a trust if contributions to the trust qualify for the annual exclusion under the federal tax code.

Internal Revenue Service Position. The Internal Revenue Service's (IRS) position is that unless a will or trust expressly precludes a trustee-beneficiary from exercising discretionary powers to distribute trust income or principal to himself, he may be considered to have a "general power of appointment" (GPOA) for estate tax purposes. A GPOA is the authority to select who will receive an estate or income from an estate or fund, including the appointer himself or his estate.

When someone has this power, the entire portion of the trust from which he may distribute funds to himself may be included in his estate for federal estate and gift tax purposes even if he did not receive any funds. The IRS considers a person to have a GPOA if he has the discretion to use trust funds for his own comfort, welfare, or happiness. But if the trust limits his power to what IRS regulations describe as an "ascertainable standard relating to his health, education, support, or maintenance," the IRS does not consider him to have a GPOA.

The IRS has ruled that if a state enacts prospective legislation that declares that a trustee-beneficiary does not have the discretion to distribute trust funds to himself unless conditions such as those specified in this bill are met, he does not have a GPOA merely because he is a trustee-beneficiary.

Marital Deduction. A marital deduction is a deduction allowed under the federal gift tax for property transfers made from one spouse to another during their lifetimes, and under the federal estate tax for spouse-to-spouse transfers made under a will.

§ 48 - Specific Powers of Trustee

Without limiting the general authority the bill grants to trustees, it authorizes a trustee to:

1. collect trust property and accept or reject additions to it from a

- settler or any other person;
2. acquire or sell property, for cash or on credit, at public or private sale;
 3. exchange, partition, or otherwise change the character of trust property;
 4. deposit trust money in an account in a regulated financial-service institution;
 5. borrow money, with or without security, and mortgage or pledge trust property for a period within or extending beyond the trust's duration;
 6. with respect to an interest in a proprietorship, partnership, limited liability company, business trust, corporation, or other form of business or enterprise, continue the business or other enterprise and take any action that may be taken by shareholders, members, or property owners, including merging, dissolving, or otherwise changing the form of business organization or contributing additional capital;
 7. with respect to stocks or other securities, exercise the rights of an absolute owner, including the right to vote, or give proxies to vote, with or without power of substitution, or enter into or continue a voting trust agreement, hold a security in the name of a nominee or in other form without disclosure of the trust so that title may pass by delivery, pay calls, assessments, and other sums chargeable or accruing against the securities, and sell or exercise stock subscription or conversion rights, and deposit the securities with a depositary or other regulated financial-service institution;
 8. with respect to an interest in real property, construct or make ordinary or extraordinary repairs or alterations to, or improvements in, buildings or other structures, demolish improvements, raze existing or erect new party walls or

- buildings, subdivide or develop land, dedicate land to public use or grant public or private easements, and make or vacate plats and adjust boundaries;
9. enter into a lease for any purpose as lessor or lessee, including a lease or other arrangement for exploration and removal of natural resources, with or without the option to purchase or renew, for a period within or extending beyond the duration of the trust;
 10. grant an option involving a sale, lease, or other disposition of trust property or acquire an option for the acquisition of property, including an option exercisable beyond the duration of the trust, and exercise an option so acquired;
 11. insure the property of the trust against damage or loss and insure the trustee, the trustee's agents, and beneficiaries against liability arising from the administration of the trust;
 12. abandon or decline to administer property of no value or of insufficient value to justify its collection or continued administration;
 13. with respect to possible liability for violation of environmental laws inspect or investigate property the trustee holds or has been asked to hold, or property owned or operated by an organization in which the trustee holds or has been asked to hold an interest, to determine the application of environmental laws with respect to the property, take action to prevent, abate, or otherwise remedy any actual or potential violation of any environmental law affecting property held directly or indirectly by the trustee, whether taken before or after the assertion of a claim or the initiation of governmental enforcement, decline to accept property into trust or disclaim any power with respect to property that is or may be burdened with liability for violation of environmental laws, compromise claims against the trust which may be asserted for an alleged violation of environmental

- laws, and pay the expense of any inspection, review, abatement, or remedial action to comply with environmental laws;
14. pay or contest any claim, settle a claim by or against the trust, and release, in whole or in part, a claim belonging to the trust;
 15. pay taxes, assessments, compensation of the trustee and employees and agents of the trust, and other expenses incurred in the administration of the trust;
 16. exercise elections with respect to federal, state, and local taxes;
 17. select a mode of payment under any employee benefit or retirement plan, annuity, or life insurance payable to the trustee, exercise rights under them, including exercise of the right to indemnification for expenses and liabilities, and take appropriate action to collect the proceeds;
 18. make loans out of trust property, including loans to a beneficiary on terms and conditions the trustee considers fair and reasonable under the circumstances, and the trustee has a lien on future distributions for repayment of those loans;
 19. pledge trust property to guarantee loans made by others to the beneficiary;
 20. appoint a trustee to act in another jurisdiction with respect to trust property located in the other jurisdiction, confer upon the appointed trustee all of the powers and duties of the appointing trustee, require that the appointed trustee furnish security, and remove any trustee so appointed;
 21. pay an amount distributable to a beneficiary who is under a legal disability or who the trustee reasonably believes is incapacitated, by paying it directly to the beneficiary or applying it for the beneficiary's benefit, paying it to beneficiary's conservator or by paying it to the beneficiary's custodian under the Uniform Transfers to Minors Act or custodial trustee under

the Uniform Custodial Trust Act, and, for that purpose, creating a custodianship or custodial trust, if the trustee does not know of a conservator, custodian, or custodial trustee, paying it to an adult relative or other person having legal or physical care or custody of the beneficiary, to be expended on the beneficiary's behalf, or managing it as a separate fund on the beneficiary's behalf, subject to the beneficiary's continuing right to withdraw the distribution;

22. with respect to distribution of trust property or the division or termination of a trust, make distributions in divided or undivided interests, allocate particular assets in proportionate or disproportionate shares, value the trust property for those purposes, and adjust for resulting differences in valuation;
23. resolve a dispute concerning the interpretation of the trust or its administration by mediation, arbitration, or other alternative dispute resolution;
24. prosecute or defend an action, claim, or judicial proceeding in any jurisdiction to protect trust property and the trustee in the performance of the trustee's duties;
25. sign and deliver contracts and other instruments that are useful to achieve or facilitate the exercise of the trustee's powers; and
26. with respect to termination of the trust, exercise the powers appropriate to wind up the administration of the trust and distribute the trust property to the people entitled to it.

§ 49 - Breach of Trust

The bill makes a trustee's violation of a duty he owes to a beneficiary a breach of trust.

LIABILITY OF TRUSTEES AND RIGHTS OF PERSONS DEALING WITH TRUSTEE

§ 50 - Damages in Absence of Breach

Under the bill, as long as he did not commit a breach, a trustee is not liable to a beneficiary for a loss or depreciation in the value of trust property or for not having made a profit.

§ 51 - Limitation on Action Against Trustee

Under the bill, a report adequately discloses the existence of a potential claim for a breach of trust if it provides sufficient information so that the beneficiary, or his representative, knows of the potential claim or should have inquired into its existence.

§ 52 - Reliance on Trust Instrument

Under the bill, a trustee is not liable to a beneficiary for a breach of trust for acting in reasonable reliance on the terms of the trust as expressed in the trust instrument.

§ 53 - Event Affecting Administration or Distribution

The bill specifies that a trustee who has exercised reasonable care to ascertain the happening of an event that affects the administration or distribution of a trust is not liable for a loss resulting from his lack of knowledge. These events include marriage, divorce, performance of educational requirements, or death.

§ 54 - Beneficiary's Consent, Release, Or Ratification

Under the bill, a trustee is not liable to a beneficiary for breach of trust if the beneficiary consented to the conduct, released the trustee from liability for it, or ratified the transaction constituting it, unless (1) the consent, release, or ratification was induced by the trustee's improper conduct or (2) at the time of the consent, release, or ratification, the beneficiary did not know of his rights or of the material facts relating to the breach.

§ 55 - Limitation on Personal Liability of Trustee

Under the bill, unless the contract provides otherwise, a trustee is not personally liable on a contract properly entered into in his fiduciary capacity in the course of administering the trust if he disclosed the fiduciary capacity in the contract.

A claim based on a contract entered into by a trustee in his fiduciary capacity, an obligation arising from ownership or control of trust property, or a tort committed in the course of administering a trust, may be asserted in court against the trustee in his fiduciary capacity, whether or not the trustee is personally liable for the claim.

§ 56 - Interest as General Partner

Unless personal liability is imposed in the contract, a trustee who holds an interest as a general partner in a general or limited partnership is not personally liable on a contract entered into by the partnership after the trust acquires the interest if he disclosed his capacity in the contract, or in a statement previously filed pursuant to the Uniform Partnership Act or Uniform Limited Partnership Act. Under the bill, a trustee who holds an interest as a general partner is not personally liable for torts committed by the partnership or for obligations arising from ownership or control of the interest unless the trustee is personally at fault.

But this immunity does not apply if the trustee holds a partnership interest in a capacity other than as trustee, or if the interest is held by the trustee's spouse or by one or more of his descendants, siblings, or parents, or the spouse of any of them.

If the trustee of a revocable trust holds an interest as a general partner, the settlor is personally liable for contracts and other obligations of the partnership as if he were a general partner.

§ 57 - Protection of Person Dealing with Trustee

Under the bill, someone other than a beneficiary is protected from liability if he in good faith assists a trustee, or in good faith and for value, deals with a trustee without knowing that the trustee is exceeding or improperly exercising his powers.

Someone other than a beneficiary who in good faith deals with a trustee is not required to inquire into the extent of the trustee's powers or whether they were exercised properly. Someone who in good faith delivers assets to a trustee does not have the duty to

ensure the trustee uses them properly.

Someone other than a beneficiary who in good faith assists a former trustee or who in good faith, and for value, deals with a former trustee, without knowing that the trusteeship has terminated is protected from liability as if the former trustee were still a trustee.

The bill specifies that comparable protective provisions of other laws relating to commercial transactions or transfer of securities by fiduciaries prevail over the protection this bill provides.

§ 58 - Certification of Trust

Instead of furnishing a copy of the trust instrument to someone other than a beneficiary, the bill allows the trustee to furnish a certification of trust containing the following information:

1. that the trust exists and the date the trust instrument was executed;
2. the settlor's identity;
3. the current trustee's identity and address;
4. the trustee's powers;
5. the revocability or irrevocability of the trust and the identity of any person holding a power to revoke the trust;
6. the authority of co-trustees to sign or otherwise authenticate and whether all, or fewer than all, are required in order to exercise powers of the trustee;
7. the trust's taxpayer identification number; and
8. the manner of taking title to trust property.

The bill allows a certification of trust to be signed or authenticated by any trustee. It must state that the trust has not been revoked, modified, or amended in any manner that would cause the

representations contained in the certification to be incorrect. It does not have to contain the trust's dispositive terms. But someone who receives a certification may require the trustee to furnish copies of those excerpts from the original trust instrument and later amendments which designate the trustee and confer upon the trustee the power to act in the pending transaction.

Someone who acts in reliance upon a certification of trust without knowing that the representations contained in it are incorrect is not liable for doing so, and may assume the existence of the facts contained in the certification.

Someone who in good faith enters into a transaction in reliance upon a certification of trust may enforce the transaction against the trust property as if the representations contained in it were correct.

Someone making a demand for the trust instrument, in addition to a certification or excerpts, is liable for damages if the court determines that he did not act in good faith in demanding it.

The bill specifies that it does not limit anyone's right to obtain a copy of the trust instrument in a judicial proceeding concerning the trust.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 38 Nay 0 (03/27/2006)