

House Bill 121 (AS PASSED HOUSE AND SENATE)

By: Representatives Efration of the 104<sup>th</sup>, Willard of the 51<sup>st</sup>, Powell of the 171<sup>st</sup>, Reeves of the 34<sup>th</sup>, Holcomb of the 81<sup>st</sup>, and others

A BILL TO BE ENTITLED  
AN ACT

1 To amend Article 9 of Chapter 6 of Title 44 and Chapter 12 of Title 53 of the Official Code  
2 of Georgia Annotated, relating to the Uniform Statutory Rule Against Perpetuities and trusts,  
3 respectively, so as to revise and modernize the law relative to trusts; to allow for trusts to  
4 exist for a longer period of time; to change provisions relating to the validity of a nonvested  
5 property interest; to change provisions relating to minor or unborn beneficiaries; to provide  
6 for nonjudicial settlement agreements with respect to a trust; to change provisions relating  
7 to the transfer of property in trust; to change provisions relating to the power to direct  
8 modification and termination of noncharitable trusts and to provide for distribution of trust  
9 property to another trust; to provide for definitions; to repeal provisions relating to division  
10 and consolidation of trusts and termination of trusts; to change provisions relating to  
11 modification or termination of uneconomic trusts; to change provisions relating to limitations  
12 on creditors' rights and creditors' claims against a settlor; to change provisions relating to  
13 appointment and vacancies of trustees; to change provisions relating to compensation and  
14 extra compensation of trustees; to change provisions relating to resignation of a trustee; to  
15 change provisions relating to a qualified beneficiary who is not sui juris; to change provisions  
16 relating to powers of trustees; to provide for trust directors; to provide for related matters;  
17 to repeal conflicting laws; and for other purposes.

18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

19 **SECTION 1.**

20 Article 9 of Chapter 6 of Title 44 of the Official Code of Georgia Annotated, relating to the  
21 Uniform Statutory Rule Against Perpetuities, is amended by revising paragraph (2) of  
22 subsections (a) through (c) of Code Section 44-6-201, relating to the validity of nonvested  
23 property interest or power of appointment, as follows:

24 "(2) The interest either vests or terminates within ~~90~~ 360 years after its creation."

25 "(2) The condition precedent either is satisfied or becomes impossible to satisfy within  
26 ~~90~~ 360 years after its creation."

27 "(2) The power is irrevocably exercised or otherwise terminates within 90 360 years after  
28 its creation."

29 **SECTION 2.**

30 Said article is further amended by revising Code Section 44-6-203, relating to reform of  
31 disposition by court to approximate transferor's plan of distribution, as follows:

32 "44-6-203.

33 Upon the petition of an interested person, a court shall reform a disposition in the manner  
34 that most closely approximates the transferor's manifested plan of distribution and is within  
35 the 90 number of years allowed by paragraph (2) of ~~subsection (a), paragraph (2) of~~  
36 ~~subsection (b), or paragraph (2) of subsection~~ subsection (a), (b), or (c) of Code Section  
37 44-6-201 if:

38 (1) A nonvested property interest or a power of appointment becomes invalid under Code  
39 Section 44-6-201;

40 (2) A class gift is not but might still become invalid under Code Section 44-6-201 and  
41 the time has arrived when the share of any class member is to take effect in possession  
42 or enjoyment; or

43 (3) A nonvested property interest that is not validated by paragraph (1) of subsection (a)  
44 of Code Section 44-6-201 can vest, but not within 90 360 years after its creation."

45 **SECTION 3.**

46 Said article is further amended by revising Code Section 44-6-205, relating to the  
47 applicability of this article and court reform of nonvested dispositions created before this  
48 article became effective, as follows:

49 "44-6-205.

50 (a) Except as extended by subsection (b) of this Code section, this article applies to a  
51 nonvested property interest or a power of appointment that is created on or after ~~May 1,~~  
52 ~~1990~~ July 1, 2018. For purposes of this Code section only, a nonvested property interest  
53 or a power of appointment created by the exercise of a power of appointment is created  
54 when the power is irrevocably exercised or when a revocable exercise becomes irrevocable.

55 (b) With respect to a nonvested property interest or a power of appointment that was  
56 created before ~~May 1, 1990~~ July 1, 2018, and that violates this state's rule against  
57 ~~perpetuities as that rule existed before May 1, 1990~~ July 1, 2018, a court upon the petition  
58 of an interested party may exercise its equitable power to reform the disposition in the  
59 manner that most closely approximates the transferor's manifested plan of distribution and  
60 is within the limits of the rule against perpetuities applicable when the nonvested property  
61 interest or power of appointment was created."

62 **SECTION 4.**

63 Chapter 12 of Title 53 of the Official Code of Georgia Annotated, relating to trusts, is  
64 amended by revising Code Section 53-12-8, relating to parent permitted to consent on behalf  
65 of minor or unborn child beneficiary if no conflict of interest, as follows:

66 "53-12-8.

67 ~~For purposes of this chapter, a parent may represent and bind such parent's minor child or~~  
68 ~~unborn child if a conservator or guardian for the child has not been appointed and there is~~  
69 ~~no conflict of interest between the parent and child.~~

70 (a) Notice to a person who may represent and bind another person under this Code section  
71 shall have the same effect as if notice were given directly to such other person.

72 (b) The consent of a person who may represent and bind another person under this Code  
73 section shall be binding on the person represented unless the person represented objects to  
74 such representation before such consent would otherwise have become effective. Consent  
75 shall include, but shall not be limited to, an action related to the granting of powers to a  
76 trustee, modification or termination of a trust, a trustee's duty to report, a trustee's  
77 compensation, the conversion of a trust to a unitrust, the appointment, resignation, or  
78 removal of a trustee, and other similar actions.

79 (c) Except as otherwise provided in Code Section 53-12-61, a person who under this Code  
80 section may represent a settlor who lacks capacity may receive notice and give a binding  
81 consent on such settlor's behalf.

82 (d) A settlor may not represent and bind a beneficiary under this Code section with respect  
83 to the termination or modification of a trust under Article 4 of this chapter.

84 (e) To the extent there is no conflict of interest between the holder of a power of  
85 appointment and the persons represented with respect to the particular question or dispute,  
86 such holder may represent and bind persons whose interests are as permissible appointees,  
87 as takers in default, or are otherwise subject to the power.

88 (f) To the extent there is no conflict of interest between the representative and the person  
89 represented or among those being represented with respect to a particular question or  
90 dispute:

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

92 (2) A guardian may represent and bind his or her ward if a conservator of such ward's  
93 estate has not been appointed;

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

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

97 (5) A personal representative of a decedent's estate may represent and bind persons  
98 interested in such estate; and

99 (6) An ancestor may represent and bind an ancestor's minor or unborn descendant if a  
 100 conservator or guardian for such descendant has not been appointed.

101 (g) Unless otherwise represented, a minor, incapacitated, or unborn individual, or a person  
 102 whose identity or location is unknown and not reasonably ascertainable, may be  
 103 represented by and bound by another having a substantially identical interest with respect  
 104 to a particular question or dispute, but only to the extent there is no conflict of interest  
 105 between the representative and the person represented with respect to such particular  
 106 question or dispute.

107 (h) A person who would be eligible to receive distributions of income or principal from  
 108 the trust upon the termination of the interests of all persons then currently eligible to  
 109 receive distributions of income or principal may represent and bind contingent successor  
 110 remainder beneficiaries, including, but not limited to, charitable entities, with respect to  
 111 matters in which there is no conflict of interest between the representative and the persons  
 112 represented with respect to a particular question or dispute.

113 (i) If the court determines that an interest is not represented under this Code section, or that  
 114 the otherwise available representation might be inadequate, the court may appoint a  
 115 representative to receive notice, give consent, and otherwise represent, bind, and act on  
 116 behalf of a minor, incapacitated, or unborn individual, or a person whose identity or  
 117 location is unknown and not reasonably ascertainable. A representative may be appointed  
 118 to represent several persons or interests. A representative may act on behalf of the  
 119 individual represented with respect to any matter arising under this chapter, regardless of  
 120 whether a judicial proceeding concerning the trust is pending. In making decisions, a  
 121 representative may consider the general benefit accruing to the living members of the  
 122 individual's family."

123 **SECTION 5.**

124 Said chapter is further amended by adding a new Code section to read as follows:

125 "53-12-9.

126 (a) As used in this Code section, the term 'interested persons' means the trustee and all  
 127 other persons whose consent would be required in order to achieve a binding settlement  
 128 were the settlement to be approved by the court.

129 (b) Except as provided in subsection (c) of this Code section, the interested persons may  
 130 enter into a binding nonjudicial settlement agreement with respect to any matter involving  
 131 a trust.

132 (c) A nonjudicial settlement agreement:

133 (1) Shall be valid only to the extent it does not violate a material purpose of the trust and  
 134 includes terms and conditions that could be properly approved by the court under this  
 135 Code or other applicable law; and

136 (2) Shall not be valid with respect to any modification or termination of a noncharitable  
 137 irrevocable trust when the settlor's consent would be required in order to achieve a  
 138 binding settlement, if such settlement were to be approved by a court.

139 (d) Any interested person may request the court approve a nonjudicial settlement  
 140 agreement, determine whether the representation as provided in Code Section 53-12-8 was  
 141 adequate, or determine whether such agreement contains terms and conditions the court  
 142 could have properly approved.

143 (e) An agreement entered into in accordance with this Code section shall be final and  
 144 binding on the interested persons as if ordered by a court with competent jurisdiction over  
 145 the trust, the trust property, and the interested persons."

146 **SECTION 6.**

147 Said chapter is further amended by revising subsection (a) of Code Section 53-12-25, relating  
 148 to the transfer of property to trust, as follows:

149 "(a) Transfer of property to a trust shall require a transfer of legal title to the trustee. In  
 150 any transfer of property or any interest in property, if a trust is named as a grantee, whether  
 151 such trust is held under the laws of this state or of any other jurisdiction, then such transfer  
 152 is deemed to have been made to the trustee of such trust as though the trustee of such trust  
 153 had been named as grantee instead of the trust."

154 **SECTION 7.**

155 Said chapter is further amended by revising Code Section 53-12-61, relating to power to  
 156 direct modification, as follows:

157 "53-12-61.

158 (a) The trust instrument may confer upon a trustee or other person a power to modify,  
 159 consolidate, divide, or terminate the trust without court approval.

160 (b) During the settlor's lifetime, the court shall approve a petition to modify or terminate  
 161 a noncharitable irrevocable trust, even if the modification or termination is inconsistent  
 162 with a material purpose of the trust, if the settlor and all the beneficiaries consent to such  
 163 modification or termination and the trustee has received notice of the proposed  
 164 modification or termination. A settlor's power to consent to such trust's modification or  
 165 termination may be exercised by:

166 (1) An agent under a power of attorney only to the extent expressly authorized by the  
 167 power of attorney and the terms of the trust;

- 168 (2) The settlor's conservator with the approval of the court supervising the  
169 conservatorship if an agent is not so authorized; or
- 170 (3) The settlor's guardian with the approval of the court supervising the guardianship if  
171 an agent is not so authorized and a conservator has not been appointed.
- 172 (c) Following the settlor's death the court shall approve a petition to:
- 173 (1) Modify a noncharitable irrevocable trust if all the beneficiaries consent, the trustee  
174 has received notice of the proposed modification, and the court concludes that  
175 modification is not inconsistent with any material purpose of such trust; and
- 176 (2) Terminate a noncharitable irrevocable trust if all the beneficiaries consent, the trustee  
177 has received notice of the proposed termination, and the court concludes that continuance  
178 of such trust is not necessary to achieve any material purpose of such trust.
- 179 (d) The court may, upon petition:
- 180 (1) Modify the trust if, owing to circumstances not anticipated by the settlor,  
181 modification would further the purposes of such trust;
- 182 (2) Modify the administrative provisions of a trust if continuation of such trust under its  
183 existing provisions would impair such trust's administration;
- 184 (3) Modify the trust by the appointment of an additional trustee or special fiduciary if  
185 such appointment is necessary or helpful to the administration of such trust;
- 186 (4) Modify the trust to achieve the settlor's tax objectives, with such modification to  
187 have either prospective or retroactive effect;
- 188 (5) Order the division of a single trust into two or more trusts or the consolidation of two  
189 or more trusts, whether created by the same or different trust instruments or by the same  
190 or different persons, into a single trust if the division or consolidation would be helpful  
191 to the administration of such trust or trusts; or
- 192 (6) Terminate a trust and order distribution of the trust property if the:
- 193 (A) Costs of administration are such that the continuance of such trust, the  
194 establishment of such trust if it is to be established, or the distribution from a probate  
195 estate would defeat or substantially impair the purposes of such trust;
- 196 (B) Purpose of such trust has been fulfilled or become illegal or impossible to fulfill;  
197 or
- 198 (C) Continuance of such trust would impair the accomplishment of the purposes of  
199 such trust.
- 200 (e) A proceeding to approve a proposed modification or termination under this Code  
201 section may be commenced by a trustee or beneficiary. A proceeding to approve a  
202 proposed modification or termination under subsection (b) of this Code section may be  
203 commenced by a trustee, beneficiary, or settlor. In the case of an unfunded testamentary

204 trust, a petition for modification or termination under this Code section may be filed by the  
 205 personal representative of the settlor's estate.

206 (f) No later than 30 days after filing the petition for modification or termination, notice of  
 207 a petition to modify or terminate a trust under subsection (d) of this Code section shall be  
 208 given to the settlor, the trustee, all the beneficiaries, any holder of a power of appointment  
 209 over the trust property, and such other persons as the court may direct.

210 (g) The court may modify or terminate a trust as provided in this Code section regardless  
 211 of whether it contains spendthrift provisions or other similar protective provisions.

212 (h) An order under subsection (d) of this Code section shall conform as nearly as  
 213 practicable to the intention of the settlor.

214 (i) Distribution of the trust property under an order for termination shall be made to or  
 215 among the current beneficiaries and the vested remainder beneficiaries, or, if there are no  
 216 vested remainder beneficiaries, among the current beneficiaries and the contingent  
 217 remainder beneficiaries. The order shall specify the appropriate share, if any, of each  
 218 current and remainder beneficiary who is to share in the proceeds of the trust so as to  
 219 conform as nearly as practicable to the intention of the settlor. The order may direct that  
 220 the interest of a minor beneficiary, or any portion thereof, be converted into qualifying  
 221 property and distributed to a custodian pursuant to Article 5 of Chapter 5 of Title 44, "The  
 222 Georgia Transfers to Minors Act."

223 **SECTION 8.**

224 Said chapter is further amended by revising Code Section 53-12-62, relating to modification  
 225 of trust by court, as follows:

226 "53-12-62.

227 ~~(a) The court may:~~

228 ~~(1) Modify the administrative or dispositive provisions of a trust if, owing to~~  
 229 ~~circumstances not known to or anticipated by the settlor, compliance with the provisions~~  
 230 ~~of the trust would defeat or substantially impair the accomplishment of the purposes of~~  
 231 ~~such trust;~~

232 ~~(2) Modify the administrative provisions of a trust if continuation of the trust under its~~  
 233 ~~existing provisions would impair such trust's administration; or~~

234 ~~(3) Modify the trust by the appointment of an additional trustee or special fiduciary if the~~  
 235 ~~court considers the appointment necessary for the administration of the trust.~~

236 ~~(b) A petition for modification may be filed by the trustee or any beneficiary or, in the case~~  
 237 ~~of an unfunded testamentary trust, the personal representative of the settlor's estate.~~

238 ~~(c) Notice of a petition to modify the trust shall be given to the trustee and all~~  
 239 ~~beneficiaries.~~

240 ~~(d) The court may modify the trust regardless of whether it contains spendthrift provisions~~  
 241 ~~or other similar protective provisions.~~

242 ~~(e) An order for modification shall conform as nearly as practicable to the intention of the~~  
 243 ~~settlor.~~

244 (a) As used in this Code section, the term:

245 (1) 'Original trust' refers to the trust from which principal is being distributed.

246 (2) 'Second trust' refers to the trust to which assets are being distributed from the original  
 247 trust, whether a separate trust or an amended version of the original trust.

248 (b)(1) As used in this subsection, the term 'current beneficiary' means a person who, on  
 249 the date of distribution to the second trust, is a distributee or permissible distributee of  
 250 trust income or principal.

251 (2) Unless the original trust instrument expressly provides otherwise, a trustee, other than  
 252 a person who contributed property to the trust, with authority to invade the principal of  
 253 the original trust to make distributions to or for the benefit of one or more of the  
 254 beneficiaries may also, independently or with court approval, exercise such authority by  
 255 distributing all or part of the principal of the original trust to a trustee of a second trust;  
 256 provided, however, that the second trust shall not include as a:

257 (A) Current beneficiary any person that is not a current beneficiary of income or  
 258 principal of the original trust; or

259 (B) Beneficiary any person that is not a beneficiary of the original trust.

260 (c) Except as provided in this Code section, a trustee may exercise the power to invade the  
 261 principal of the original trust under subsection (b) of this Code section without the consent  
 262 of the settlor or the beneficiaries of the original trust if such trustee provides written notice  
 263 of such trustee's decision to exercise the power to such settlor, if living, and those persons  
 264 then entitled to annual reports from the trustee of the original trust. Such notice shall:

265 (1) Describe the manner in which such trustee intends to exercise such power;

266 (2) Specify the date such trustee proposes to distribute to the second trust; and

267 (3) Be delivered at least 60 days before the proposed distribution to the second trust.

268 (d) The exercise of the power to invade the principal of the original trust under  
 269 subsection (b) of this Code section shall be by an instrument in writing, signed and  
 270 acknowledged by the trustee, and filed with the records of the original trust.

271 (e) The exercise of the power to invade the principal of the original trust under  
 272 subsection (b) of this Code section shall not extend the permissible period of the rule  
 273 against perpetuities that applies to such original trust.

274 (f) This Code section shall not be construed to abridge the right of any trustee who has a  
 275 power of invasion to distribute property in further trust that arises under any other law or  
 276 under common law, and nothing in this Code section shall be construed to imply that the



277 common law does not permit the exercise of a power to invade the principal of a trust in  
278 the manner authorized under subsection (b) of this Code section.

279 (g) A second trust may confer a power of appointment upon a beneficiary of the original  
280 trust to whom or for the benefit of whom the trustee has the power to distribute the  
281 principal of such original trust. For purposes of this subsection, the permissible appointees  
282 of the power of appointment conferred upon a beneficiary may include persons who are not  
283 beneficiaries of such original trust or second trust.

284 (h) If any contribution to the original trust qualified for the annual exclusion under  
285 Section 2503(b) of the federal Internal Revenue Code, as it existed on February 1, 2018,  
286 the marital deduction under Section 2056(a) or 2523(a) of the federal Internal Revenue  
287 Code, as it existed on February 1, 2018, or the charitable deduction under Section 170(a),  
288 642(c), 2055(a), or 2522(a) of the federal Internal Revenue Code, as it existed on  
289 February 1, 2018, is a direct skip qualifying for treatment under Section 2642(c) of the  
290 federal Internal Revenue Code, as it existed on February 1, 2018, or qualified for any other  
291 specific tax benefit that would be lost by the existence of the authorized trustee's authority  
292 under subsection (b) of this Code section for income, gift, estate, or generation-skipping  
293 transfer tax purposes under the federal Internal Revenue Code, then the authorized trustee  
294 shall not have the power to distribute the principal of a trust pursuant to subsection (b) of  
295 this Code section in a manner that would prevent the contribution to the original trust from  
296 qualifying for such exclusion, deduction, or other tax benefit or would reduce such  
297 exclusion, deduction, or other tax benefit that was originally claimed with respect to such  
298 contribution.

299 (i) The exercise of the power to invade the principal of the original trust under  
300 subsection (b) of this Code section shall be subject to the following limitations:

301 (1) The second trust need not qualify as a grantor trust for federal income tax purposes,  
302 even if the original trust does qualify as a grantor trust, except that if such original trust  
303 qualifies as a grantor trust because of the application of Section 672(f)(2)(A) of the  
304 federal Internal Revenue Code, as it existed on February 1, 2018, such second trust may  
305 not include or omit a term that, if included in or omitted from the original trust  
306 instrument, would have prevented such original trust from qualifying under such section;

307 (2) The second trust may qualify as a grantor trust for federal income tax purposes, even  
308 if the original trust does not so qualify, except that if such original trust does not so  
309 qualify and such second trust will so qualify, in whole or in part, with respect to the  
310 settlor, such second trust shall grant such settlor or another person a power that would  
311 cause such second trust to cease to be a grantor trust for federal income tax purposes  
312 unless such settlor objects in a writing delivered to the trustee before the date the trustee  
313 proposes to distribute from such original trust to such second trust; and

314 (3) When both the original trust and the second trust qualify as grantor trusts for federal  
315 income tax purposes and such original trust grants the settlor or another person the power  
316 to cause such original trust to cease to be a grantor trust, such second trust shall grant an  
317 equivalent power to the settlor or another person unless such settlor objects in a writing  
318 delivered to the trustee before the date the trustee proposes to distribute from such  
319 original trust to such second trust.

320 (j) During any period when the original trust owns stock in a Subchapter 'S' corporation  
321 as defined in Section 1361(a)(1) of the federal Internal Revenue Code, as it existed on  
322 February 1, 2018, an authorized trustee shall not exercise a power authorized by subsection  
323 (b) of this Code section to distribute part or all of the stock of the Subchapter 'S'  
324 corporation to a second trust that is not a permitted shareholder under Section 1361(c)(2)  
325 of the federal Internal Revenue Code, as it existed on February 1, 2018.

326 (k) A trustee or other person that reasonably relies on the validity of a distribution of  
327 property of the original trust to the second trust under subsection (b) of this Code section  
328 or any other law or common law shall not be liable for any action or failure to act as a  
329 result of such reliance.

330 (l) This Code section shall not create or imply a duty for a trustee to exercise a power  
331 conferred by this Code section.

332 (m) If exercise of the power to invade the principal of the original trust would be effective  
333 under subsection (b) of this Code section except that the second trust in part does not  
334 comply with this Code section, such exercise of the power shall be effective, a provision  
335 in such second trust that is not permitted under this Code section shall be void to the extent  
336 necessary to comply with this Code section, and a provision required by this Code section  
337 to be in such second trust that is not contained in such second trust shall be deemed to be  
338 included in such second trust to the extent necessary to comply with this Code section.

339 (n) The settlor of the original trust shall be deemed to be the settlor of the second trust with  
340 respect to the portion of the principal of the original trust subject to the exercise of the  
341 power to invade the principal of such original trust under subsection (b) of this Code  
342 section.

343 (o) A debt, liability, or other obligation enforceable against property of the original trust  
344 shall be enforceable to the same extent against the property when held by the second trust  
345 after exercise of the power to invade the principal of such original trust under subsection  
346 (b) of this Code section.

347 (p) This Code section shall not apply to a trust held solely for charitable purposes."

348 **SECTION 9.**

349 Said chapter is further amended by repealing Code Section 53-12-63, relating to division and  
350 consolidation of trusts, and designating it as reserved.

351 **SECTION 10.**

352 Said chapter is further amended by repealing Code Section 53-12-64, relating to termination  
353 of trusts, and designating it as reserved.

354 **SECTION 11.**

355 Said chapter is further amended by revising subsection (a) of Code Section 53-12-65, relating  
356 to modification or termination of uneconomic trust, as follows:

357 "(a) After notice to the qualified beneficiaries, the trustee of a trust consisting of trust  
358 property either having a total value less than ~~\$50,000.00~~ \$100,000.00 or for which the  
359 trustee's annual fee for administering the trust is 5 percent or more of the market value of  
360 the principal assets of the trust as of the last day of the preceding trust accounting year may  
361 terminate the trust if the trustee concludes that the value of the trust property is insufficient  
362 to justify the cost of administration, provided that in the case of a cemetery trust, notice  
363 shall be given to the Attorney General. For purposes of this subsection, the term 'cemetery  
364 trust' means a trust the sole purpose of which is to hold and invest property to be used for  
365 the maintenance and care of cemetery plots."

366 **SECTION 12.**

367 Said chapter is further amended by revising Code Section 53-12-81, relating to limitations  
368 on creditors' rights, as follows:

369 "53-12-81.

370 A transferee or creditor of a beneficiary shall not compel the trustee to pay any amount that  
371 is payable only in the trustee's discretion regardless of whether the discretion is expressed  
372 in the form of a standard of distribution, including, but not limited to, health, education,  
373 maintenance, and support, and whether such trustee is also a beneficiary. This Code  
374 section shall not apply to the extent of the proportion of trust property attributable to the  
375 beneficiary's contribution."

376 **SECTION 13.**

377 Said chapter is further amended by revising Code Section 53-12-82, relating to creditors'  
378 claims against settlor, as follows:

379 "53-12-82.

380 (a) Whether or not the trust instrument contains a spendthrift provision, the following rules  
381 shall apply:

382 (1) During the lifetime of the settlor, the property of a revocable trust shall be subject to  
383 claims of the settlor's creditors;

384 (2) With respect to an irrevocable trust, ~~creditors~~:

385 (A) Creditors or assignees of the settlor may reach the maximum amount that can be  
386 distributed to or for the settlor's benefit during the settlor's life or that could have been  
387 distributed to or for the settlor's benefit immediately prior to the settlor's death,  
388 provided, that if.—If a trust has more than one settlor, the amount the creditors or  
389 assignees of a particular settlor may reach shall not exceed the settlor's interest in the  
390 portion of the trust attributable to that settlor's contribution; and

391 (B) The portion of a trust that can be distributed to or for the settlor's benefit pursuant  
392 to the power of a trustee, whether arising under the trust agreement or any other law,  
393 to make a distribution to or for the benefit of a settlor for the purpose of reimbursing  
394 the settlor in an amount equal to any income taxes payable on any portion of the trust  
395 principal and income that is treated as the settlor's individual income under applicable  
396 law shall not be considered an amount that can be distributed to or for the settlor's  
397 benefit during the settlor's life or that could have been distributed to or for the settlor's  
398 benefit immediately prior to the settlor's death; and

399 (3) After the death of a settlor, and subject to the settlor's right to direct the source from  
400 which liabilities shall be paid, the property of a trust that was revocable at the settlor's  
401 death or had become irrevocable as a result of the settlor's incapacity shall be subject to  
402 claims of the settlor's creditors to the extent the probate estate is inadequate. Payments  
403 that would not be subject to the claims of the settlor's creditors if made by way of  
404 beneficiary designation to persons other than the settlor's estate shall not be made subject  
405 to such claims by virtue of this Code section unless otherwise provided in the trust  
406 instrument.

407 (b)(1) As used in this subsection, the term:

408 (A) 'Inter vivos marital trust' means:

409 (i) A trust described in Section 2523(e) of the Internal Revenue Code of 1986, as it  
410 existed on February 1, 2018;

411 (ii) A trust for which the election described in Section 2523(f) of the Internal  
412 Revenue Code of 1986, as it existed on February 1, 2018, has been made; or

413 (iii) Another trust to the extent such trust's assets are attributable to a trust described  
414 in division (i) or (ii) of this subparagraph.

415 (B) 'Settlor's spouse' means the spouse of the settlor at the time of the creation of an  
 416 inter vivos marital trust, regardless of whether such spouse is married to the settlor at  
 417 the time of such spouse's death.

418 (2) Subject to Article 4 of Chapter 2 of Title 18, after the death of the settlor's spouse,  
 419 the assets of an inter vivos marital trust shall be deemed to have been contributed by the  
 420 settlor's spouse and not by the settlor."

421 **SECTION 14.**

422 Said chapter is further amended by revising subsections (d) and (f) of Code Section  
 423 53-12-201, relating to appointment and vacancies of trustees, as follows:

424 ~~"(d) If all the qualified beneficiaries are sui juris, or if some of the qualified beneficiaries~~  
 425 ~~are not sui juris but all have a guardian or conservator, the~~ The qualified beneficiaries may  
 426 appoint a trustee by unanimous consent."

427 ~~"(f) The petition provided for in subsection (e) of this Code section shall be served upon~~  
 428 ~~all qualified beneficiaries or their guardians or conservators. The court shall appoint a~~  
 429 ~~guardian ad litem for each beneficiary who is not sui juris and who has no guardian or~~  
 430 ~~conservator, and service of notice of the petition shall be made on such guardian ad litem.~~

431 **SECTION 15.**

432 Said chapter is further amended by revising Code Section 53-12-210, relating to  
 433 compensation of trustee, as follows:

434 "53-12-210.

435 (a) Trustees shall be compensated in accordance with either the trust instrument or any  
 436 separate written agreement between the trustee and the settlor. After the settlor's death or  
 437 incapacity or while the trust is irrevocable, the trust instrument or the agreement relating  
 438 to the such trustee's compensation may be modified as follows:

439 ~~(1) If all the~~ All qualified beneficiaries are sui juris, or if some of the qualified  
 440 ~~beneficiaries are not sui juris but all of them have a guardian or conservator, the trustee~~  
 441 ~~and the sui juris qualified beneficiaries and the guardians or conservators of qualified~~  
 442 ~~beneficiaries who are not sui juris may by unanimous consent modify the trust instrument~~  
 443 ~~or agreement relating to the trustee's compensation without receiving the approval of any~~  
 444 ~~court; and~~

445 ~~(2) If one or more of the qualified beneficiaries who are not sui juris have no guardian~~  
 446 ~~or conservator, and all of the other qualified beneficiaries, including the guardians or~~  
 447 ~~conservators of qualified beneficiaries who are not sui juris, and the trustee are in~~  
 448 ~~agreement, any sui juris qualified beneficiary or the guardian or conservator of a~~  
 449 ~~beneficiary who is not sui juris or the trustee shall petition the court to approve a~~

450 ~~modification of the trust instrument or agreement relating to the trustee's compensation.~~  
 451 ~~The court shall appoint a guardian ad litem for each beneficiary who is not sui juris and~~  
 452 ~~who does not have a guardian or conservator, and service of notice of the petition for~~  
 453 ~~modification of the trustee's compensation shall be made on each such guardian ad litem.~~  
 454 ~~The court shall hold a hearing and shall either allow or deny the modification that is~~  
 455 ~~requested in the petition~~ By petition pursuant to Code Section 53-12-61.

456 (b) If there is no provision for trustee compensation in the trust instrument and there is no  
 457 separate written agreement between the trustee and the settlor relating to the such trustee's  
 458 compensation, a separate written agreement relating to the such trustee's compensation may  
 459 be entered into between the such trustee and the qualified beneficiaries as follows:

460 (1) ~~If all the All qualified beneficiaries are sui juris or if some of the qualified~~  
 461 ~~beneficiaries are not sui juris but all of them have a guardian or conservator, the trustee~~  
 462 ~~and the sui juris qualified beneficiaries and the guardians or conservators of beneficiaries~~  
 463 ~~who are not sui juris may by unanimous consent enter into an agreement relating to the~~  
 464 such trustee's compensation without receiving the approval of any court; or

465 (2) ~~If one or more of the qualified beneficiaries who are not sui juris have no guardian~~  
 466 ~~or conservator, and all of the other qualified beneficiaries, including the guardians or~~  
 467 ~~conservators of qualified beneficiaries who are not sui juris, and the trustee are in~~  
 468 ~~agreement, any sui juris qualified beneficiary or the guardian or conservator of a~~  
 469 ~~beneficiary who is not sui juris or the trustee shall~~ Any qualified beneficiary may petition  
 470 the court to approve an agreement relating to the such trustee's compensation. Such  
 471 petition shall be served upon all qualified beneficiaries. ~~The court shall appoint a~~  
 472 ~~guardian ad litem for each beneficiary who is not sui juris and who does not have a~~  
 473 ~~guardian or conservator, and service of notice of the petition for approval of the~~  
 474 ~~agreement shall be made on each such guardian ad litem. The court shall hold a hearing~~  
 475 ~~and shall either allow or deny the agreement that is requested in the petition.~~

476 (c) In cases other than those described in subsections (a) and (b) of this Code section, the  
 477 trustee shall be entitled to compensation as follows:

478 (1) With respect to a corporate trustee, its published fee schedule, provided such fees are  
 479 reasonable under the circumstances; and

480 (2) With respect to an individual trustee:

481 (A) One percent of cash and the fair market value of any other principal asset received  
 482 upon the initial funding of the trust and at such time as additional principal assets are  
 483 received; and

484 (B) An annual fee calculated in accordance with the following schedule based upon the  
 485 cash and the market value of the other principal assets valued as of the last day of the

486 trust accounting year prorated based on the length of service by the such trustee during  
487 that year:

Percentage Fee	Market Value
489 <del>1.75 percent / year on the first</del> . . . . .	<del>\$ 500,000.00</del>
490 <del>1.25 percent / year on the next</del> . . . . .	<del>\$ 500,000.00</del>
491 <del>1.00 percent / year on the next</del> . . . . .	<del>\$ 1,000,000.00</del>
492 <del>0.85 percent / year on the next</del> . . . . .	<del>\$ 3,000,000.00</del>
493 <del>0.50 percent / year on values over</del> . . . . .	<del>\$ 5,000,000.00</del>

<u>If the cash and market value of the</u> <u>other principal assets are:</u>	<u>Annual fee:</u>
494 <u>\$500,000.00 or less</u> . . . . .	<u>1.75 percent of the cash and market value of</u> 497 <u>the other principal assets.</u>
498 <u>More than \$500,000.00 but less than</u> 499 <u>\$1 million</u> . . . . .	<u>\$8,750.00 plus 1.25 percent of the excess</u> <u>over \$500,000.00.</u>
500 <u>More than \$1 million but less than \$2</u> 501 <u>million</u> . . . . .	<u>\$15,000.00 plus 1.00 percent of the excess</u> <u>over \$1 million.</u>
502 <u>More than \$2 million but less than \$5</u> 503 <u>million</u> . . . . .	<u>\$25,000.00 plus 0.85 percent of the excess</u> <u>over \$2 million.</u>
504 <u>More than \$5 million</u> . . . . .	<u>\$50,500.00 plus 0.50 percent of the excess</u> 505 <u>over \$5 million."</u>

506 **SECTION 16.**

507 Said chapter is further amended by revising subsection (a) of Code Section 53-12-212,  
508 relating to extra compensation, as follows:

509 "(a) A trustee who is receiving compensation as described in subsection (c) of Code  
510 Section 53-12-210 may petition the court for compensation that is greater than the  
511 compensation allowed under that subsection. ~~Service of notice~~ Notice of the petition for  
512 extra compensation shall be ~~made on~~ given to all qualified beneficiaries ~~or their guardians~~  
513 ~~or conservators. The court shall appoint a guardian ad litem for each qualified beneficiary~~  
514 ~~who is not sui juris and who does not have a guardian or conservator, and service of notice~~  
515 ~~of the petition for modification of the trustee's compensation shall be made on each such~~  
516 ~~guardian ad litem."~~

517 **SECTION 17.**

518 Said chapter is further amended by revising Code Section 53-12-220, relating to resignation  
 519 of trustee, as follows:

520 "53-12-220.

521 (a) A trustee may resign:

522 (1) In the manner and under the circumstances described in the trust instrument;

523 (2) ~~Upon petition to the court showing that all of at least 30 days' written notice to the~~  
 524 ~~qualified beneficiaries are sui-juris or that all of the qualified beneficiaries who are not~~  
 525 ~~sui-juris have guardians or conservators and that all the qualified beneficiaries or their~~  
 526 ~~guardians or conservators have agreed in writing to the resignation, the settlor, if living,~~  
 527 ~~and all cotrustees; or~~

528 (3) ~~If all the sui-juris qualified beneficiaries and their guardians or conservators are not~~  
 529 ~~in agreement, or if one or more of the qualified beneficiaries is not sui-juris and has no~~  
 530 ~~guardian or conservator, upon petition to the court showing to the satisfaction of the court~~  
 531 ~~that:~~

532 ~~(A) The trustee is unable to continue serving as trustee due to age, illness, infirmity,~~  
 533 ~~or similar reason;~~

534 ~~(B) Greater burdens have devolved upon the office of trustee than those which were~~  
 535 ~~originally contemplated or should have been contemplated when the trust was accepted,~~  
 536 ~~and the assumption of the additional burdens would work a hardship upon the trustee;~~

537 ~~(C) Disagreement exists between one or more of the beneficiaries of the trust and the~~  
 538 ~~trustee with respect to the trustee's management of the trust, which disagreement and~~  
 539 ~~conflict appear detrimental to the best interests of the trust;~~

540 ~~(D) The resignation of the trustee will result in or permit substantial financial benefit~~  
 541 ~~to the trust;~~

542 ~~(E) The resigning trustee is one of two or more acting trustees, and the cotrustee or~~  
 543 ~~cotrustees will continue in office with no detriment to the trust contemplated; or~~

544 ~~(F) The resignation would not be disadvantageous to the trust~~ Upon a trustee's petition  
 545 to the court.

546 (b) The petition to the court provided for in paragraph (3) of subsection (a) of this Code  
 547 section shall be served upon all qualified beneficiaries ~~or their guardians or conservators.~~  
 548 ~~The court shall appoint a guardian ad litem for each beneficiary who is not sui-juris and~~  
 549 ~~who does not have a guardian or conservator, and service of notice of the petition for~~  
 550 ~~resignation shall be made on each such guardian ad litem. In approving a trustee's~~  
 551 resignation, the court may issue orders and impose conditions reasonably necessary for the  
 552 protection of the trust property.



553 (c) The resignation of a trustee shall not relieve ~~the~~ such trustee from liability for any  
 554 actions prior to the resignation except to the extent ~~the~~ such trustee is relieved by the court  
 555 in the appropriate proceeding or to the extent relieved by the trust instrument.

556 (d) If the resignation would create a vacancy required to be filled, then the trustee's  
 557 resignation shall not be effective until the successor trustee accepts the trust and the  
 558 resigning trustee shall remain liable for any actions until such acceptance, except as such  
 559 liability may be limited by court order or the trust instrument."

560 **SECTION 18.**

561 Said chapter is further amended by revising subsection (a) of Code Section 53-12-242,  
 562 relating to duty to inform as to the existence of trust, as follows:

563 "(a) Within 60 days after the date of creation of an irrevocable trust or of the date on which  
 564 a revocable trust becomes irrevocable, the trustee shall notify the qualified beneficiaries  
 565 of ~~the~~ such trust of the existence of ~~the~~ such trust and the name and mailing address of ~~the~~  
 566 such trustee. ~~In full satisfaction of this obligation, the trustee may deliver the notice to the~~  
 567 ~~guardian or conservator of any beneficiary who is not sui juris."~~

568 **SECTION 19.**

569 Said chapter is further amended by revising subsection (a) of Code Section 53-12-243,  
 570 relating to duty to provide reports and accounts, as follows:

571 "(a) On reasonable request by any qualified beneficiary ~~or the guardian or conservator of~~  
 572 ~~a qualified beneficiary who is not sui juris~~, the trustee shall provide the qualified  
 573 beneficiary with a report of information, to the extent relevant to that beneficiary's interest,  
 574 about the assets, liabilities, receipts, and disbursements of the trust, the acts of the trustee,  
 575 and the particulars relating to the administration of ~~the~~ such trust, including the trust  
 576 provisions that describe or affect such beneficiary's interest."

577 **SECTION 20.**

578 Said chapter is further amended by revising Code Section 53-12-261, relating to powers of  
 579 trustees, as follows:

580 "53-12-261.

581 ~~(a) As used in this Code section, the term 'fiduciary' means the one or more personal~~  
 582 ~~representatives of the estate of a decedent or the one or more trustees of a testamentary or~~  
 583 ~~inter vivos trust, whichever in a particular case is appropriate. A trustee of an express trust,~~  
 584 without court authorization, shall be authorized to exercise:

585 (1) Powers conferred by the trust instrument; and

586 (2) Except as limited by the trust instrument:

587 (A) All powers over the trust property that an unmarried competent owner has over  
 588 individually owned property;

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

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

592 (b) A Without limiting the authority conferred by subsection (a) of this Code section, a  
 593 trustee of an express trust, without court authorization, shall be authorized:

594 (1) To sell, exchange, grant options upon, partition, or otherwise dispose of any property  
 595 or interest therein which the fiduciary may hold from time to time, at public or private  
 596 sale or otherwise, with or without warranties or representations, upon such terms and  
 597 conditions, including credit, and for such consideration as the fiduciary deems advisable  
 598 and to transfer and convey the property or interest therein which is at the disposal of the  
 599 fiduciary, in fee simple absolute or otherwise, free of all trust. The party dealing with the  
 600 fiduciary shall not be under a duty to follow the proceeds or other consideration received;

601 (2) To invest and reinvest in any property which the fiduciary deems advisable,  
 602 including, but not limited to, common or preferred stocks, bonds, debentures, notes,  
 603 mortgages, or other securities, in or outside the United States; insurance contracts on the  
 604 life of any beneficiary or of any person in whom a beneficiary has an insurable interest  
 605 or in annuity contracts for any beneficiary; any real or personal property; investment  
 606 trusts, including the securities of or other interests in any open-end or closed-end  
 607 management investment company or investment trust registered under the federal  
 608 Investment Company Act of 1940, 15 U.S.C. Section 80a-1, et seq.; and participations  
 609 in common trust funds;

610 (3) To the extent and upon such terms and conditions and for such periods of time as the  
 611 fiduciary shall deem necessary or advisable, to continue or participate in the operation of  
 612 any business or other enterprise, whatever its form or organization, including, but not  
 613 limited to, the power:

614 (A) To effect incorporation, dissolution, or other change in the form of the organization  
 615 of the business or enterprise;

616 (B) To dispose of any interest therein or acquire the interest of others therein;

617 (C) To contribute or invest additional capital thereto or to lend money thereto in any  
 618 such case upon such terms and conditions as the fiduciary shall approve from time to  
 619 time; and

620 (D) To determine whether the liabilities incurred in the conduct of the business are to  
 621 be chargeable solely to the part of the trust property held by the fiduciary set aside for  
 622 use in the business or to the trust property held by the fiduciary as a whole.

623 In all cases in which the fiduciary is required to file accounts in any court or in any other  
 624 public office, it shall not be necessary to itemize receipts, disbursements, and  
 625 distributions of property; but it shall be sufficient for the fiduciary to show in the account  
 626 a single figure or consolidation of figures, and the fiduciary shall be permitted to account  
 627 for money and property received from the business and any payments made to the  
 628 business in lump sum without itemization;

629 (4) To form a corporation or other entity and to transfer, assign, and convey to the  
 630 corporation or entity all or any part of the ~~trust~~ property held by the fiduciary in exchange  
 631 for the stock, securities, or obligations of or other interests in any such corporation or  
 632 entity and to continue to hold the stock, securities, obligations, and interests;

633 (5) To continue any farming operation and to do any and all things deemed advisable by  
 634 the fiduciary in the management and maintenance of the farm and the production and  
 635 marketing of crops and dairy, poultry, livestock, orchard, and forest products, including,  
 636 but not limited to, the power:

637 (A) To operate the farm with hired labor, tenants, or sharecroppers;

638 (B) To lease or rent the farm for cash or for a share of the crops;

639 (C) To purchase or otherwise acquire farm machinery, equipment, and livestock;

640 (D) To construct, repair, and improve farm buildings of all kinds needed, in the  
 641 fiduciary's judgment, for the operation of the farm;

642 (E) To make or obtain loans or advances at the prevailing rate or rates of interest for  
 643 farm purposes, such as for production, harvesting, or marketing; or for the construction,  
 644 repair, or improvement of farm buildings; or for the purchase of farm machinery,  
 645 equipment, or livestock;

646 (F) To employ approved soil conservation practices, in order to conserve, improve, and  
 647 maintain the fertility and productivity of the soil;

648 (G) To protect, manage, and improve the timber and forest on the farm and to sell the  
 649 timber and forest products when it is to the best interest of the ~~trust~~ persons to whom  
 650 the fiduciary owes a duty of care;

651 (H) To ditch, dam, and drain damp or wet fields and areas of the farm when and where  
 652 needed;

653 (I) To engage in the production of livestock, poultry, or dairy products and to construct  
 654 such fences and buildings and to plant pastures and crops as may be necessary to carry  
 655 on such operations;

656 (J) To market the products of the farm; and

657 (K) In general, to employ good husbandry in the farming operation;

658 (6) To manage real property:

659 (A) To improve, manage, protect, and subdivide any real property;

- 660 (B) To dedicate, or withdraw from dedication, parks, streets, highways, or alleys;
- 661 (C) To terminate any subdivision or part thereof;
- 662 (D) To borrow money for the purposes authorized by this paragraph for the periods of
- 663 time and upon the terms and conditions as to rates, maturities, and renewals as the
- 664 fiduciary shall deem advisable and to mortgage or otherwise encumber the property or
- 665 part thereof, whether in possession or reversion;
- 666 (E) To lease the property or part thereof, the lease to commence at the present or in the
- 667 future, upon the terms and conditions, including options to renew or purchase, and for
- 668 the period or periods of time as the fiduciary deems advisable even though the period
- 669 or periods may extend beyond the duration of the estate or trust;
- 670 (F) To make gravel, sand, oil, gas, and other mineral leases, contracts, licenses,
- 671 conveyances, or grants of every nature and kind which are lawful in the jurisdiction in
- 672 which the property lies;
- 673 (G) To manage and improve timber and forests on the property, to sell the timber and
- 674 forest products, and to make grants, leases, and contracts with respect thereto;
- 675 (H) To modify, renew, or extend leases;
- 676 (I) To employ agents to rent and collect rents;
- 677 (J) To create easements and to release, convey, or assign any right, title, or interest
- 678 with respect to any easement on the property or part thereof;
- 679 (K) To erect, repair, or renovate any building or other improvement on the property
- 680 and to remove or demolish any building or other improvement in whole or in part; and
- 681 (L) To deal with the property and every part thereof in all other ways and for such
- 682 other purposes or considerations as it would be lawful for any person owning the same
- 683 to deal with ~~the~~ such property either in the same or in different ways from those
- 684 specified elsewhere in this paragraph;
- 685 (7) To lease personal property ~~of the trust~~ held by the fiduciary or part thereof, the lease
- 686 to commence at the present or in the future, upon the terms and conditions, including
- 687 options to renew or purchase, and for the period or periods of time as the fiduciary deems
- 688 advisable even though the period or periods may extend beyond the duration of the estate
- 689 or trust;
- 690 (8)(A) To pay debts, taxes, assessments, compensation of the fiduciary, and other
- 691 expenses incurred in the collection, care, administration, and protection of the ~~trust~~
- 692 property held by the fiduciary; and
- 693 (B) To pay from the estate or trust all charges that the fiduciary deems necessary or
- 694 appropriate to comply with laws regulating environmental conditions and to remedy or
- 695 ameliorate any such conditions which the fiduciary determines adversely affect the ~~trust~~
- 696 property held by the fiduciary or otherwise are liabilities of the estate or trust and to

697 apportion all such charges among the several bequests and trusts and the interests of the  
 698 beneficiaries in such manner as the fiduciary deems fair, prudent, and equitable under  
 699 the circumstances;

700 (9) To receive additional property from any source and to administer the additional  
 701 property as a portion of the appropriate estate or trust under the management of the  
 702 fiduciary, provided that the fiduciary shall not be required to receive the property without  
 703 the fiduciary's consent;

704 (10) In dealing with one or more fiduciaries of the estate or any trust created by the  
 705 decedent or the settlor or any spouse or child of the decedent or settlor and irrespective  
 706 of whether the fiduciary is a personal representative or trustee of such other estate or  
 707 trust:

708 (A) To sell real or personal property of the estate or trust to such fiduciary or to  
 709 exchange such property with such fiduciary upon such terms and conditions as to sale  
 710 price, terms of payment, and security as shall seem advisable to the fiduciary; and the  
 711 fiduciary shall be under no duty to follow the proceeds of any such sale; and

712 (B) To borrow money from the estate or trust for such periods of time and upon such  
 713 terms and conditions as to rates, maturities, renewals, and securities as the fiduciary  
 714 shall deem advisable for the purpose of paying debts of the decedent or settlor, taxes,  
 715 the costs of the administration of the estate or trust, and like charges against the estate  
 716 or trust or any part thereof or of discharging any other liabilities of the estate or trust  
 717 and to mortgage, pledge, or otherwise encumber such portion of the estate or trust as  
 718 may be required to secure the loan and to renew existing loans;

719 (11) To borrow money for such periods of time and upon such terms and conditions as  
 720 to rates, maturities, renewals, and security as the fiduciary shall deem advisable for the  
 721 purpose of paying debts, taxes, or other charges against the estate or trust or any part  
 722 thereof and to mortgage, pledge, or otherwise encumber such portion of the ~~trust~~ property  
 723 held by the fiduciary as may be required to secure the loan and to renew existing loans  
 724 either as maker or endorser;

725 (12) To make loans ~~or advances for the benefit or the protection of the trust~~ out of the  
 726 property held by the fiduciary, including loans to a beneficiary on terms and conditions  
 727 the fiduciary considers to be fair and reasonable under the circumstances, and the  
 728 fiduciary has a lien on future distributions for repayment of those loans;

729 (13) To vote shares of stock or other ownership interests ~~owned~~ held by the ~~trust~~  
 730 fiduciary, in person or by proxy, with or without power of substitution;

731 (14) To hold a security in the name of a nominee or in other form without disclosure of  
 732 the fiduciary relationship, so that title to the security may pass by delivery; but the

733 fiduciary shall be liable for any act of the nominee in connection with the security so  
734 held;

735 (15) To exercise all options, rights, and privileges to convert stocks, bonds, debentures,  
736 notes, mortgages, or other property into other stocks, bonds, debentures, notes,  
737 mortgages, or other property; to subscribe for other or additional stocks, bonds,  
738 debentures, notes, mortgages, or other property; and to hold the stocks, bonds,  
739 debentures, notes, mortgages, or other property so acquired as investments of the estate  
740 or trust so long as the fiduciary shall deem advisable;

741 (16) To unite with other owners of property similar to any which may be held at any time  
742 ~~in the trust~~ by the fiduciary, in carrying out any plan for the consolidation or merger,  
743 dissolution or liquidation, foreclosure, lease, or sale of the property or the incorporation  
744 or reincorporation, reorganization, or readjustment of the capital or financial structure of  
745 any corporation, company, or association the securities of which may form any portion  
746 of an estate or trust; to become and serve as a member of a shareholders' or bondholders'  
747 protective committee; to deposit securities in accordance with any plan agreed upon; to  
748 pay any assessments, expenses, or sums of money that may be required for the protection  
749 or furtherance of the interest of the beneficiaries ~~of any trust~~ to whom the fiduciary owes  
750 a duty of care with reference to any such plan; and to receive as investments of the estate  
751 or trust any securities issued as a result of the execution of such plan;

752 (17) To adjust the interest rate from time to time on any obligation, whether secured or  
753 unsecured, constituting a part of the estate or trust;

754 (18) To continue any obligation, whether secured or unsecured, upon and after maturity,  
755 with or without renewal or extension, upon such terms as the fiduciary shall deem  
756 advisable, without regard to the value of the security, if any, at the time of the  
757 continuance;

758 (19) To foreclose, as an incident to the collection of any bond, note, or other obligation,  
759 any deed to secure debt or any mortgage, deed of trust, or other lien securing the bond,  
760 note, or other obligation and to bid in the property at the foreclosure sale or to acquire the  
761 property by deed from the mortgagor or obligor without foreclosure; and to retain the  
762 property so bid in or taken over without foreclosure;

763 (20) To carry such insurance coverage as the fiduciary shall deem advisable;

764 (21) To collect, receive, and issue receipts for rents, issues, profits, and income of the  
765 estate or trust;

766 (22)(A) To compromise, adjust, mediate, arbitrate, or otherwise deal with and settle  
767 claims involving the ~~trust or the trustee~~ fiduciary or the property held by the fiduciary;

768 (B) To compromise, adjust, mediate, arbitrate, bring or defend actions on, abandon, or  
769 otherwise deal with and settle claims in favor of or against the estate or trust as the

770 fiduciary shall deem advisable; the fiduciary's decision shall be conclusive between the  
 771 fiduciary and the beneficiaries ~~of the trust~~ to whom the fiduciary owes a duty of care  
 772 and the person against or for whom the claim is asserted, in the absence of fraud by  
 773 such persons and, in the absence of fraud, bad faith, or gross negligence of the  
 774 fiduciary, shall be conclusive between the fiduciary and the beneficiaries ~~of the trust~~ to  
 775 whom the fiduciary owes a duty of care; and

776 (C) To compromise all debts, the collection of which are doubtful, belonging to the  
 777 estate or trust when such settlements will advance the interests of those represented;

778 (23) To employ and compensate, out of income or principal or both and in such  
 779 proportion as the fiduciary shall deem advisable, persons deemed by the fiduciary needful  
 780 to advise or assist in the administration of ~~any~~ the estate or trust, including, but not  
 781 limited to, agents, accountants, brokers, attorneys at law, attorneys in fact, investment  
 782 brokers, rental agents, realtors, appraisers, and tax specialists; and to do so without  
 783 liability for any neglect, omission, misconduct, or default of the agent or representative,  
 784 provided such person was selected and retained with due care on the part of the fiduciary;

785 (24) To acquire, receive, hold, and retain undivided the principal of several trusts created  
 786 by a single trust instrument until division shall become necessary in order to make  
 787 distributions; to hold, manage, invest, reinvest, and account for the several shares or parts  
 788 of shares by appropriate entries in the fiduciary's books of account and to allocate to each  
 789 share or part of share its proportionate part of all receipts and expenses; provided,  
 790 however, that this paragraph shall not defer the vesting in possession of any share or part  
 791 of share of the trust;

792 (25) To set up proper and reasonable reserves for taxes, assessments, insurance  
 793 premiums, depreciation, obsolescence, amortization, depletion of mineral or timber  
 794 properties, repairs, improvements, and general maintenance of buildings or other property  
 795 out of rents, profits, or other income received;

796 (26) To value ~~assets of the trust~~ property held by the fiduciary and to distribute ~~them~~  
 797 such property in cash or in kind, or partly in cash and partly in kind, in divided or  
 798 undivided interests, as the fiduciary finds to be most practical and in the best interest of  
 799 the distributees, the fiduciary being able to distribute types of assets differently among  
 800 the distributees;

801 (27) To transfer money or other property distributable to a beneficiary who is under age  
 802 21, an adult for whom a guardian or conservator has been appointed, or an adult who the  
 803 fiduciary reasonably believes is incapacitated by distributing such money or property  
 804 directly to the beneficiary or applying it for the beneficiary's benefit, or by:

805 (A) Distributing it to the beneficiary's conservator or, if the beneficiary does not have  
 806 a conservator, the beneficiary's guardian;

807 (B) Distributing it to the beneficiary's custodian under 'The Georgia Transfers to  
808 Minors Act' or similar state law and, for that purpose, creating a custodianship and  
809 designating a custodian;

810 (C) Distributing it to the beneficiary's custodial trustee under the Uniform Custodial  
811 Trust Act as enacted in another state and, for that purpose, creating a custodial trust; or

812 (D) Distributing it to any other person, whether or not appointed guardian or  
813 conservator by any court, who shall, in fact, have the care and custody of the person of  
814 the beneficiary.

815 The fiduciary shall not be under any duty to see to the application of the distributions so  
816 made if the fiduciary exercised due care in the selection of the person, including the  
817 beneficiary, to whom the payments were made; and the receipt of the person shall be full  
818 acquittance to the fiduciary;

819 (28) To determine:

820 (A) What is principal and what is income of any estate or trust and to allocate or  
821 apportion receipts and expenses, as between principal and income, in the exercise of the  
822 fiduciary's discretion and, by way of illustration and not limitation of the fiduciary's  
823 discretion, to charge premiums on securities purchased at a premium against principal  
824 or income or partly against each;

825 (B) Whether to apply stock dividends and other noncash dividends to income or  
826 principal or to apportion them as the fiduciary shall deem advisable; and

827 (C) What expenses, costs, and taxes, other than estate, inheritance, and succession  
828 taxes and other governmental charges, shall be charged against principal or income or  
829 apportioned between principal and income and in what proportions;

830 (29) To make, modify, and execute contracts and other instruments, under seal or  
831 otherwise, as the fiduciary deems advisable; and

832 ~~(29)~~(30) To serve without making and filing inventory and appraisal, without filing  
833 any annual or other returns or reports to any court, and without giving bond; but, a  
834 personal representative shall furnish to the income beneficiaries, at least annually, a  
835 statement of receipts and disbursements.

836 (c) The exercise of a power shall be subject to the fiduciary duties prescribed by this  
837 chapter.

838 (d) If a probate court grants to a personal representative any of the powers contained in this  
839 Code section, then as used in this Code section the term:

840 (1) 'Beneficiary' includes a distributee of the estate;

841 (2) 'Trust' includes the estate held by the personal representative; and

842 (3) 'Trustee' or 'fiduciary' includes the personal representative.



843 **SECTION 21.**

844 Said chapter is further amended by revising subsections (d) and (e) of Code Section  
845 53-12-263, relating to incorporation of powers by reference, as follows:

846 "(d)(1) A provision in any will or trust instrument which incorporates powers by citation  
847 to Georgia Laws 1973, page 846; Code 1933, Section 108-1204 (Harrison); ~~or former~~  
848 ~~Code Section 53-12-40; 53-12-232; or 53-15-3; or Code Section 15-12-261,~~ which were  
849 in effect at the time the trust was created and which was valid under the law in existence  
850 at the time the will was signed by the testator or at the time of the signing by the first  
851 settlor who ~~signs~~ signed the trust instrument shall be effective notwithstanding the  
852 subsequent repeal or amendment of such statute.

853 (2) A provision in any will or trust instrument which was signed by the testator or by the  
854 first settlor to sign after June 30, 1991, but before July 1, 1992, and which incorporates  
855 powers by citation to former Code Section ~~53-12-40~~ or 53-15-3 in effect on the date of  
856 such signing shall be deemed to mean and refer to the corresponding powers contained  
857 in former Code Section 53-12-232.

858 (e) If any or all of the powers contained in this part are incorporated by reference into a  
859 will by a testator, then as used in this part the term:

860 (1) 'Beneficiary' includes a distributee of the estate.

861 (2) 'Trust' ~~(1) The term 'trust'~~ includes the estate held by the personal representative; and

862 (3) 'Trustee' ~~(2) The term 'trustee'~~ or 'fiduciary' includes the personal representative; and

863 ~~(3) The term 'beneficiaries of the trust' includes distributees of the estate."~~

864 **SECTION 22.**

865 Said chapter is further amended by revising Code Section 53-12-264, relating to granting of  
866 powers by qualified beneficiaries, as follows:

867 "53-12-264.

868 The qualified beneficiaries of a trust that omits any of the powers in Code Section  
869 53-12-261 may by unanimous consent authorize but not require the court to grant to the  
870 trustee those powers. ~~With respect to any qualified beneficiary who is not sui juris, such~~  
871 ~~consent may be given by the duly appointed conservator, if any, or if none, by the duly~~  
872 ~~appointed guardian, if any, or if none, by either parent in the case of a minor, or if none,~~  
873 ~~by a guardian ad litem appointed to represent the qualified beneficiary who is not sui juris."~~

874 **SECTION 23.**

875 Said chapter is further amended by revising Code Section 53-12-303, relating to relief of  
876 liability, as follows:

877 "53-12-303.

878 (a) No provision in a trust instrument shall be effective to relieve the trustee of liability for  
879 a breach of trust committed in bad faith or with reckless indifference to the interests of the  
880 beneficiaries.

881 (b) A trustee of a revocable trust shall not be liable to a beneficiary for any act performed  
882 or omitted pursuant to written direction from a person holding the power to revoke,  
883 including a person to whom the power to ~~direct the trustee~~ revoke the trust is delegated.  
884 If the trust is revocable in part, then this subsection shall apply with respect to the interest  
885 of the beneficiary in that part of the trust property.

886 ~~(c) Whenever a trust reserves to the settlor or vests in an advisory or investment committee  
887 or in any other person, including a cotrustee, to the exclusion of one or more trustees, the  
888 authority to direct the making or retention of any investment, the excluded trustee shall be  
889 liable, if at all, only as a ministerial agent and not as trustee for any loss resulting from the  
890 making or retention or any investment pursuant to the authorized direction."~~

891 **SECTION 24.**

892 Said chapter is further amended by revising subsection (a) of Code Section 53-12-362,  
893 relating to conversion to unitrust, as follows:

894 "(a) Unless expressly prohibited by the trust instrument, a trustee may release the power  
895 to adjust under Code Section 53-12-361 and convert a trust into a unitrust as described in  
896 this Code section if:

897 (1) The trustee determines that the conversion will enable ~~the~~ such trustee to better carry  
898 out the intent of the settlor or testator and the purposes of the trust;

899 (2) The trustee gives written notice of ~~the~~ such trustee's intention to release the power  
900 to adjust and to convert the trust into a unitrust and of how the unitrust will operate,  
901 including what initial decisions ~~the~~ such trustee will make under this Code section, to:

902 (A) The settlor, if living;

903 (B) All living persons who are currently receiving or eligible to receive distributions  
904 of income of the trust; and

905 (C) Without regard to the exercise of any power of appointment, all living persons who  
906 would receive principal of the trust if the trust were to terminate at the time of the  
907 giving of such notice and all living persons who would receive or be eligible to receive  
908 distributions of income or principal of the trust if the interests of all of the beneficiaries  
909 currently eligible to receive income under subparagraph (B) of this paragraph were to  
910 terminate at the time of the giving of such notice.

911 ~~If a beneficiary is not sui juris, such notice shall be given to the beneficiary's conservator,~~  
 912 ~~if any, and if the beneficiary has no conservator, to the beneficiary's guardian, including,~~  
 913 ~~in the case of a minor beneficiary, the beneficiary's natural guardian;"~~

914 **SECTION 25.**

915 Said chapter is further amended by adding a new article to read as follows:

916 "ARTICLE 18

917 53-12-500.

918 As used in this article, the term:

919 (1) 'Directed trustee' means a trustee that is subject to a trust director's power of  
 920 direction.

921 (2) 'Power of appointment' means a power that enables a person, acting in a nonfiduciary  
 922 capacity, to designate a recipient of either an ownership interest in or another power of  
 923 appointment over trust property.

924 (3) 'Power of direction' means a power over a trust granted to a person by the trust  
 925 instrument to the extent the power is exercisable while the person is not serving as a  
 926 trustee. Such term includes a power over the administration of the trust or the  
 927 investment, management, or distribution of the trust property; a power to consent to a  
 928 trustee's actions, whether through exercise of an affirmative power to consent or through  
 929 nonexercise of a veto power over a trustee's actions, when a trustee may not act without  
 930 such consent; a power to represent a beneficiary, other than a power under Code Section  
 931 53-12-8; and, except as otherwise provided in the trust instrument, any further powers  
 932 appropriate to the exercise or nonexercise of such powers. Such term shall exclude the  
 933 powers described in subsection (b) of Code Section 53-12-501.

934 (4) 'Trust director' means a person that is granted a power of direction by a trust to the  
 935 extent the power is exercisable while the person is not serving as a trustee, regardless of  
 936 how the trust instrument refers to such person and regardless of whether the person is a  
 937 beneficiary or settlor of the trust.

938 53-12-501.

939 (a) This article shall apply when the trust instrument evidences the settlor's intent to  
 940 provide for the office and function of a trust director, regardless of the terms used to  
 941 describe such office and functions.

942 (b) This article shall not apply to:

943 (1) A power of appointment;

- 944 (2) A power to appoint or remove a trustee or trust director;  
 945 (3) A power of a settlor to revoke the trust or amend the trust instrument;  
 946 (4) A power of a beneficiary over a trust to the extent the exercise or nonexercise of the  
 947 power affects the beneficial interest of the beneficiary or a person represented by the  
 948 beneficiary under Code Section 53-12-8 with respect to the exercise or nonexercise of the  
 949 power; or  
 950 (5) A power over a trust if:  
 951 (A) The terms of the trust provide such power is held in a nonfiduciary capacity; and  
 952 (B) Such power must be held in a nonfiduciary capacity to achieve the settlor's tax  
 953 objectives.  
 954 (c) Except as otherwise provided in the trust instrument, for purposes of this Code section  
 955 a power that is both a power of appointment and a power of direction shall be deemed a  
 956 power of appointment and not a power of direction.
- 957 53-12-502.  
 958 (a) Subject to this Code section, a trust instrument may grant powers of direction to a trust  
 959 director.  
 960 (b) A trust director shall be subject to the same rules as a trustee in a like position and  
 961 under similar circumstances in the exercise or nonexercise of a power of direction  
 962 regarding:  
 963 (1) A payback provision in the trust necessary to comply with the reimbursement  
 964 requirements of Medicaid law in Section 1917 of the Social Security Act, 42 U.S.C.  
 965 Section 1396p(d)(4)(A), as it existed on February 1, 2018, and regulations issued  
 966 thereunder; and  
 967 (2) A charitable interest in the trust.  
 968 (c) The powers of direction of a trust director who is also a beneficiary shall be subject to  
 969 the limitations of Code Section 53-12-270.  
 970 (d) In the case of a power to modify the trust:  
 971 (1) The duties or liabilities of a trustee may not be enlarged without the trustee's express  
 972 consent; and  
 973 (2) A trustee shall not be liable for failing to act in accordance with a modification or  
 974 termination of a trust of which the trustee had no notice.
- 975 53-12-503.  
 976 (a) Except as otherwise provided in this Code section, with respect to a power of direction:

977 (1) A trust director shall have the same fiduciary duty and liability in the exercise or  
 978 nonexercise of the power of direction as a trustee in a like position and under similar  
 979 circumstances; and

980 (2) The trust instrument may vary the trust director's duty or liability to the same extent  
 981 the trust instrument could vary the duty or liability of a trustee in a like position and  
 982 under similar circumstances.

983 (b) A trust instrument may make the existence of a trust director's power of direction  
 984 contingent upon the occurrence of certain events, including, but not limited to, a request  
 985 to the trust director from a beneficiary or other similar party.

986 (c) A trust instrument may empower a trust director to delegate a power of direction to a  
 987 trustee and provide that, upon written acceptance of such delegation by the trustee, the  
 988 trustee shall assume the fiduciary duties and liabilities conferred by the power of direction  
 989 until such time as the trust director or trustee terminates the delegation by written notice.

990 (d) Subject to subsection (g) of this Code section, a trust director shall:

991 (1) Keep trustees and other trust directors reasonably informed of the exercise or  
 992 nonexercise of the trust director's power of direction to the extent such exercise or  
 993 nonexercise is relevant to the party's powers and duties regarding the trust; and

994 (2) Respond to reasonable requests from trustees and other trust directors for information  
 995 to the extent such information is relevant to the party's powers and duties regarding the  
 996 trust.

997 (e) A trust director acting in reliance on information provided by a trustee or another trust  
 998 director shall not be liable for a breach of trust to the extent the breach resulted from such  
 999 reliance, unless by so acting the trust director engages in willful misconduct.

1000 (f) Except as otherwise provided in the trust instrument, if a trust director is licensed,  
 1001 certified, or otherwise authorized or permitted by law other than this article to provide  
 1002 health care in the ordinary course of the trust director's business or practice of a profession,  
 1003 to the extent the trust director acts in such capacity, the trust director shall have no duty or  
 1004 liability under this article.

1005 (g)(1) Except as otherwise provided in the trust instrument, a trust director shall not have  
 1006 a duty to:

1007 (A) Monitor a trustee or another trust director regarding matters outside the scope of  
 1008 the trust director's powers of direction; or

1009 (B) Inform or give advice to a settlor, beneficiary, trustee, or another trust director  
 1010 concerning an instance in which the director might have acted differently than a trustee  
 1011 or another trust director.

1012 (2) By taking one of the actions described in paragraph (1) of this subsection, a trust  
 1013 director shall not assume any of the duties excluded by this subsection.

1014 (h) A trust instrument may impose a duty or liability on a trust director in addition to the  
1015 duties and liabilities under this Code section.

1016 (i) A trust director that has reasonable doubt about a duty imposed by this Code section  
1017 may petition the court for instructions.

1018 53-12-504.

1019 (a) Unless compliance by the directed trustee would clearly constitute willful misconduct  
1020 on the part of the directed trustee, a directed trustee shall take reasonable action to comply  
1021 with a trust director's exercise or nonexercise of a power of direction and shall not be liable  
1022 for such action.

1023 (b) Subject to subsection (e) of this Code section, a directed trustee shall:

1024 (1) Account at least annually to a trust director as if the trust director were a qualified  
1025 beneficiary of an irrevocable trust to whom income is required or authorized in the  
1026 trustee's discretion to be distributed; and

1027 (2) Respond to reasonable requests from a trust director for information to the extent  
1028 such information is relevant to the party's interest in or trust director's powers and duties  
1029 regarding the trust.

1030 (c) A directed trustee acting in reliance on information provided by a trust director shall  
1031 not be liable for a breach of trust to the extent the breach resulted from such reliance,  
1032 unless by so acting the directed trustee engages in willful misconduct.

1033 (d) A trustee shall not be liable for a failure to sufficiently report or provide information  
1034 to a beneficiary or other party when such failure is related to the failure of a trust director  
1035 to provide information to the trustee.

1036 (e)(1) Except as otherwise provided in the trust instrument, a trustee shall not have a duty  
1037 to:

1038 (A) Monitor, investigate, review, or evaluate a trust director, including a trust director's  
1039 actions or inactions;

1040 (B) Provide any accountings, reports, or other information to a trust director beyond  
1041 that required by subsection (b) of this Code Section;

1042 (C) Advise a trust director regarding the scope, nature, execution, standard of care,  
1043 potential liability, or other aspects of their status as trust director;

1044 (D) Take any action in response to willful misconduct by the trust director other than  
1045 the refusal to comply with such direction;

1046 (E) Attempt to compel a trust director to act or not act;

1047 (F) Petition the court regarding a trust director's action, inaction, capacity, or any  
1048 similar matter; or

1049 (G) Inform or give advice to a settlor, beneficiary, trustee, or trust director concerning  
 1050 an instance in which the trustee might have acted differently than the trust director.  
 1051 (2) By taking one of the actions described in paragraph (1) of this Code section, a  
 1052 directed trustee does not assume any of the duties excluded by this subsection.  
 1053 (f) An exercise of a power of direction under which a trust director may release a trustee  
 1054 from liability for breach of trust shall not be effective if the release was induced by willful  
 1055 misconduct or the provision of false or incomplete information by the trustee.  
 1056 (g) A directed trustee that has reasonable doubt about a duty imposed by this Code section  
 1057 may petition the court for instructions.

1058 53-12-505.  
 1059 A trust instrument may relieve a cotrustee from duty and liability with respect to another  
 1060 cotrustee's exercise or nonexercise of a power of the other cotrustee to the same extent that  
 1061 a directed trustee is relieved from duty and liability with respect to a trust director's power  
 1062 of direction under this article.

1063 53-12-506.  
 1064 (a) Except as otherwise provided in the trust instrument, the rules applicable to a trustee  
 1065 shall apply to a trust director regarding:  
 1066 (1) Appointment and vacancies under Code Section 53-12-201;  
 1067 (2) Acceptance under Code Section 53-12-202;  
 1068 (3) Giving of a bond under Code Section 53-12-203;  
 1069 (4) Co-trustees under Code Section 53-12-204;  
 1070 (5) Compensation and reimbursement of expenses under Code Sections 53-12-210  
 1071 through 53-12-214;  
 1072 (6) Resignation under Code Section 53-12-220;  
 1073 (7) Removal under Code Section 53-12-221; and  
 1074 (8) Service under Code Section 53-12-320.  
 1075 (b) In an action against a trust director for breach of trust, the trust director may assert the  
 1076 same defenses a trustee in a like position and under similar circumstances could assert in  
 1077 an action for breach of trust against the trustee.  
 1078 (c) By accepting appointment as a trust director of a trust subject to this article, a trust  
 1079 director submits to personal jurisdiction of the courts of this state regarding any matter  
 1080 related to a power or duty of a trust director. This subsection shall not preclude use of  
 1081 another method to obtain jurisdiction over a trust director."

1082

**SECTION 26.**

1083 All laws and parts of laws in conflict with this Act are repealed.