

SENATE BILL NO. 196—SENATOR CARE

FEBRUARY 24, 2003

Referred to Committee on Judiciary

SUMMARY—Enacts Uniform Prudent Investor Act and Uniform Principal and Income Act (1997). (BDR 13-1107)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to trusts; adapting the Uniform Prudent Investor Act and the Uniform Principal and Income Act (1997) to each other and the structure of Nevada Revised Statutes; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 **Section 1.** Chapter 164 of NRS is hereby amended by adding
2 thereto the provisions set forth as sections 2 to 44, inclusive, of this
3 act.

4 **Sec. 2.** *As used in sections 2 to 44, inclusive, of this act:*

5 1. *“Fiduciary” means a trustee or, to the extent that sections*
6 *15 to 44, inclusive, of this act apply to an estate, a personal*
7 *representative.*

8 2. *“Terms of a trust” means the manifestation of the intent of*
9 *a settlor or decedent with respect to the trust, expressed in a*
10 *manner that admits of its proof in a judicial proceeding, whether*
11 *by written or spoken words or by conduct.*

12 **Sec. 3.** *In performing his duties under sections 2 to 44,*
13 *inclusive, of this act, a fiduciary:*

14 1. *Shall administer a trust or estate in accordance with the*
15 *terms of the trust or the will, even if there is a different provision*
16 *in sections 2 to 44, inclusive, of this act;*

17 2. *May administer a trust or estate by the exercise of a*
18 *discretionary power of administration given to the fiduciary by the*



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1 *terms of the trust or the will, even if the exercise of the power*
2 *produces a result different from a result required or permitted by*
3 *sections 2 to 44, inclusive, of this act; and*

4 *3. Shall administer a trust or estate in accordance with*
5 *sections 2 to 44, inclusive, of this act if the terms of the trust or the*
6 *will do not contain a different provision or do not give the*
7 *fiduciary a discretionary power of administration.*

8 **Sec. 4.** *A trustee shall invest and manage the trust property*
9 *solely in the interest of the beneficiaries.*

10 **Sec. 5.** *1. If a trust has two or more beneficiaries, the*
11 *trustee shall act impartially in investing and managing the trust*
12 *property, taking into account any differing interests of the*
13 *beneficiaries.*

14 *2. In exercising the power to adjust under section 18 of this*
15 *act or a discretionary power of administration regarding a matter*
16 *within the scope of sections 15 to 44, inclusive, of this act, whether*
17 *granted by the terms of a trust, a will or sections 15 to 44,*
18 *inclusive, of this act, a fiduciary shall administer a trust or estate*
19 *impartially, based on what is fair and reasonable to all the*
20 *beneficiaries, except to the extent that the terms of the trust or the*
21 *will clearly manifest an intention that the fiduciary shall or may*
22 *favor one or more of the beneficiaries. A determination in*
23 *accordance with sections 15 to 44, inclusive, of this act is*
24 *presumed to be fair and reasonable to all the beneficiaries.*

25 **Sec. 5.3.** *1. As used in this section, "action" includes a*
26 *course of action and a decision on whether or not to take action.*

27 *2. A trustee may provide a notice of proposed action*
28 *regarding any matter governed by sections 2 to 44, inclusive, of*
29 *this act.*

30 *3. If a trustee provides a notice of proposed action, the trustee*
31 *shall mail the notice of proposed action to every adult beneficiary*
32 *who, at the time the notice is provided, receives, or is entitled to*
33 *receive, income under the trust or who would be entitled to receive*
34 *a distribution of principal if the trust were terminated. A notice of*
35 *proposed action need not be provided to a person who consents in*
36 *writing to the proposed action. A consent to a proposed action may*
37 *be executed before or after the proposed action is taken.*

38 *4. The notice of proposed action must state:*

39 *(a) That the notice is provided pursuant to this section;*

40 *(b) The name and mailing address of the trustee;*

41 *(c) The name and telephone number of a person with whom to*
42 *communicate for additional information regarding the proposed*
43 *action;*

44 *(d) A description of the proposed action and an explanation of*
45 *the reason for taking the action;*



1 (e) *The time within which objection to the proposed action may*
2 *be made, which must be not less than 30 days after the notice of*
3 *proposed action is mailed; and*

4 (f) *The date on or after which the proposed action is to be*
5 *taken or is to be effective.*

6 5. *A beneficiary may object to the proposed action by mailing*
7 *a written objection to the trustee at the address and within the time*
8 *stated in the notice.*

9 6. *If no beneficiary entitled to receive notice of a proposed*
10 *action objects to the proposed action and the other requirements of*
11 *this section are met, the trustee is not liable to any present or*
12 *future beneficiary with respect to that proposed action.*

13 7. *If the trustee received a written objection to the proposed*
14 *action within the period specified in the notice, the trustee or a*
15 *beneficiary may petition the court for an order to take the action*
16 *as proposed, take the action with modification or deny the*
17 *proposed action. A beneficiary who failed to object to the proposed*
18 *action is not estopped from opposing the proposed action. The*
19 *burden is on a beneficiary to prove that the proposed action*
20 *should not be taken or should be modified.*

21 8. *If the trustee decides not to take a proposed action for*
22 *which notice has been provided, the trustee shall notify the*
23 *beneficiaries of his decision not to take the proposed action and*
24 *the reasons for his decision. The trustee is not liable to any present*
25 *or future beneficiary with respect to the decision not to take the*
26 *proposed action. A beneficiary may petition the court for an order*
27 *to take the action as proposed. The burden is on the beneficiary to*
28 *prove that the proposed action should be taken.*

29 9. *If the proposed action for which notice has been proved is*
30 *an adjustment to principal and income pursuant to section 18 of*
31 *this act, the sole remedy a court may order, pursuant to*
32 *subsections 7 and 8, is to make the adjustment, to make the*
33 *adjustment with a modification or to order the adjustment not to*
34 *be made.*

35 **Sec. 5.5.** *1. The provisions of sections 2 to 44, inclusive, of*
36 *this act do not impose or create a duty of a trustee to make an*
37 *adjustment between principal and income pursuant to the*
38 *provisions of section 18 of this act.*

39 2. *A trustee shall not be liable for:*

40 (a) *Not considering whether to make such an adjustment; or*

41 (b) *Deciding not to make such an adjustment.*

42 **Sec. 5.7.** *Except as specifically provided in a trust*
43 *instrument, a will or sections 2 to 44, inclusive, the provisions of*
44 *sections 2 to 44, inclusive, apply to any trust or estate of a*
45 *decedent existing on or after October 1, 2003.*



1 **Sec. 6.** *Sections 2 to 14, inclusive, of this act may be cited as*
2 *the Uniform Prudent Investor Act.*

3 **Sec. 7.** *A trustee who invests and manages trust property*
4 *owes a duty to the beneficiaries of the trust to comply with the*
5 *prudent investor rule as set forth in sections 2 to 14, inclusive, of*
6 *this act but a trustee is not liable to a beneficiary to the extent that*
7 *the trustee acted in reasonable reliance on the terms of the trust.*

8 **Sec. 8.** 1. *A trustee shall invest and manage trust property*
9 *as a prudent investor would, considering the terms, purposes,*
10 *requirements for distribution, and other circumstances of the*
11 *trust. In satisfying this standard, the trustee shall exercise*
12 *reasonable care, skill and caution.*

13 2. *A trustee's decisions concerning investment and*
14 *management as applied to individual assets must be evaluated not*
15 *in isolation but in the context of the trust portfolio as a whole and*
16 *as part of an overall strategy of investment having objectives for*
17 *risk and return reasonably suited to the trust.*

18 3. *Among circumstances that a trustee shall consider in*
19 *investing and managing trust property are such of the following as*
20 *are relevant to the trust or its beneficiaries:*

21 (a) *General economic conditions;*
22 (b) *The possible effect of inflation or deflation;*
23 (c) *The expected tax consequences of decisions or strategies;*
24 (d) *The role that each investment or course of action plays*
25 *within the overall trust portfolio;*
26 (e) *The expected total return from income and the*
27 *appreciation of capital;*
28 (f) *Other resources of the beneficiaries;*
29 (g) *Needs for liquidity, regularity of income, and preservation*
30 *or appreciation of capital; and*
31 (h) *An asset's special relationship or special value, if any, to*
32 *the purposes of the trust or to one or more of the beneficiaries.*

33 4. *A trustee shall make a reasonable effort to verify facts*
34 *relevant to the investment and management of trust property.*

35 5. *A trustee may invest in any kind of property or type of*
36 *investment consistent with the standards of sections 2 to 14,*
37 *inclusive, of this act, which may include financial assets, interests*
38 *in closely held enterprises, tangible and intangible personal*
39 *property, and real property.*

40 6. *A trustee who has special skills or expertise, or is named*
41 *trustee in reliance upon his representation that he has special*
42 *skills or expertise, has a duty to use those special skills or*
43 *expertise.*

44 **Sec. 9.** *A trustee shall diversify the investments of the trust*
45 *unless he reasonably determines that, because of special*



1 *circumstances, the purposes of the trust are better served without*
2 *diversifying.*

3 **Sec. 10.** *Within a reasonable time after accepting a*
4 *trusteeship or receiving trust property, a trustee shall review the*
5 *trust property and make and carry out decisions concerning the*
6 *retention and disposition of assets, in order to bring the trust*
7 *portfolio into compliance with the purposes, terms, requirements*
8 *for distribution and other circumstances of the trust, and with the*
9 *requirements of sections 2 to 14, inclusive, of this act.*

10 **Sec. 11.** *In investing and managing trust property, a trustee*
11 *may only incur costs that are appropriate and reasonable in*
12 *relation to the property, the purposes of the trust and the skills of*
13 *the trustee.*

14 **Sec. 12.** *Compliance with the prudent investor rule is*
15 *determined in light of the facts and circumstances existing at the*
16 *time of a trustee's decision or action and not by hindsight.*

17 **Sec. 13.** *1. A trustee may delegate functions of investment*
18 *and management that a prudent trustee of comparable skills could*
19 *properly delegate under the circumstances. He shall exercise*
20 *reasonable care, skill and caution in:*

- 21 (a) *Selecting an agent;*
22 (b) *Establishing the scope and terms of the delegation,*
23 *consistent with the purposes and terms of the trust; and*
24 (c) *Periodically reviewing the agent's actions in order to verify*
25 *the agent's performance and compliance with the terms of the*
26 *delegation.*

27 *2. In performing a delegated function, an agent owes a duty*
28 *to the trust to exercise reasonable care to comply with the terms of*
29 *the delegation.*

30 *3. A trustee who complies with the requirements of subsection*
31 *1 is not liable to the beneficiaries or to the trust for the decisions*
32 *or actions of the agent to whom the function was delegated.*

33 *4. By accepting the delegation of a function from the trustee*
34 *of a trust that is subject to the law of this state, an agent submits to*
35 *the jurisdiction of the courts of this state.*

36 **Sec. 14.** *The following terms or comparable language in the*
37 *terms of a trust, unless otherwise limited or modified, authorizes*
38 *any investment or strategy permitted under sections 2 to 14,*
39 *inclusive, of this act: "investments permissible by law for*
40 *investment of trust funds," "legal investments," "authorized*
41 *investments," "using the judgment and care under the*
42 *circumstances then prevailing that persons of prudence, discretion*
43 *and intelligence exercise in the management of their own affairs,*
44 *not in regard to speculation but in regard to the permanent*
45 *disposition of their funds, considering the probable income as well*



1 *as the probable safety of their capital,” “prudent man rule,”*
2 *“prudent trustee rule,” “prudent person rule” and “prudent*
3 *investor rule.”*

4 **Sec. 15.** *Section 2, subsection 2 of section 5 and sections 15*
5 *to 44, inclusive, of this act may be cited as the Uniform Principal*
6 *and Income Act (1997).*

7 **Sec. 16.** *As used in sections 15 to 44, inclusive, of this act:*

8 1. *“Accounting period” means a calendar year unless*
9 *another 12-month period is selected by a fiduciary. The term*
10 *includes a portion of a calendar year or other 12-month period*
11 *that begins when an income interest begins or ends when an*
12 *income interest ends.*

13 2. *“Beneficiary” includes, in the case of a decedent’s estate,*
14 *an heir, legatee and devisee and, in the case of a trust, an income*
15 *beneficiary and a remainder beneficiary.*

16 3. *“Fiduciary” includes an executor, administrator, successor*
17 *personal representative, special administrator and a person*
18 *performing substantially the same function.*

19 4. *“Income” means money or property that a fiduciary*
20 *receives as current return from a principal asset. The term*
21 *includes a portion of receipts from a sale, exchange or liquidation*
22 *of a principal asset, to the extent provided in sections 24 to 38,*
23 *inclusive, of this act.*

24 5. *“Income beneficiary” means a person to whom net income*
25 *of a trust is or may be payable.*

26 6. *“Income interest” means the right of an income*
27 *beneficiary to receive all or part of net income, whether the terms*
28 *of the trust require it to be distributed or authorize it to be*
29 *distributed in the trustee’s discretion.*

30 7. *“Mandatory income interest” means the right of an income*
31 *beneficiary to receive net income that the terms of the trust require*
32 *the fiduciary to distribute.*

33 8. *“Net income” means the total receipts allocated to income*
34 *during an accounting period minus the disbursements made from*
35 *income during the period, plus or minus transfers under sections*
36 *15 to 44, inclusive, of this act to or from income during the period.*

37 9. *“Principal” means property held in trust for distribution to*
38 *a remainder beneficiary when the trust terminates.*

39 10. *“Remainder beneficiary” means a person entitled to*
40 *receive principal when an income interest ends.*

41 **Sec. 17.** *In allocating receipts and disbursements to or*
42 *between principal and income, and with respect to any matter*
43 *within the scope of sections 19 to 23, inclusive, of this act, a*
44 *fiduciary shall add a receipt or charge a disbursement to principal*
45 *to the extent that the terms of the trust and sections 15 to 44,*



1 *inclusive, of this act do not provide a rule for allocating the receipt*
2 *or disbursement to or between principal and income.*

3 **Sec. 18.** 1. *A trustee may adjust between principal and*
4 *income to the extent he considers necessary if he invests and*
5 *manages trust assets as a prudent investor, the terms of the trust*
6 *describe the amount that may or must be distributed to a*
7 *beneficiary by referring to the trust's income, and he determines,*
8 *after applying the rules in sections 3 and 17 of this act, that he is*
9 *unable to comply with subsection 2 of section 5 of this act.*

10 2. *In deciding whether and to what extent to exercise the*
11 *power conferred by subsection 1, a trustee shall consider all*
12 *factors relevant to the trust and its beneficiaries, including the*
13 *following factors to the extent they are relevant:*

14 (a) *The nature, purpose and expected duration of the trust;*
15 (b) *The intent of the settlor;*
16 (c) *The identity and circumstances of the beneficiaries;*
17 (d) *The needs for liquidity, regularity of income, and*
18 *preservation and appreciation of capital;*

19 (e) *The assets held in the trust, the extent to which the assets*
20 *consist of financial assets, interests in closely held enterprises,*
21 *tangible and intangible personal property, or real property, the*
22 *extent to which an asset is used by a beneficiary, and whether an*
23 *asset was purchased by the trustee or received from the settlor;*

24 (f) *The net amount allocated to income under the other*
25 *provisions of sections 15 to 44, inclusive, of this act and the*
26 *increase or decrease in the value of the principal assets, which the*
27 *trustee may estimate as to assets for which market values are not*
28 *readily available;*

29 (g) *Whether and to what extent the terms of the trust give the*
30 *trustee the power to invade principal or accumulate income or*
31 *prohibit him from invading principal or accumulating income,*
32 *and the extent to which he has exercised a power from time to time*
33 *to invade principal or accumulate income;*

34 (h) *The actual and anticipated effect of economic conditions*
35 *on principal and income and effects of inflation and deflation;*
36 *and*

37 (i) *The anticipated tax consequences of an adjustment.*

38 3. *A trustee may not make an adjustment:*

39 (a) *That diminishes the income interest in a trust that requires*
40 *all the income to be paid at least annually to a surviving spouse*
41 *and for which an estate tax or gift tax marital deduction would be*
42 *allowed, in whole or in part, if the trustee did not have the power*
43 *to make the adjustment;*



1 (b) That reduces the actuarial value of the income interest in a
2 trust to which a person transfers property with the intent to qualify
3 for a gift tax exclusion;

4 (c) That changes the amount payable to a beneficiary as a
5 fixed annuity or a fixed fraction of the value of the trust assets;

6 (d) From any amount that is permanently set aside for
7 charitable purposes under a will or the terms of a trust unless both
8 income and principal are so set aside;

9 (e) If possessing or exercising the power to make an
10 adjustment causes a natural person to be treated as the owner of
11 all or part of the trust for income tax purposes, and the natural
12 person would not be treated as the owner if the trustee did not
13 possess the power to make an adjustment;

14 (f) If possessing or exercising the power to make an
15 adjustment causes all or part of the trust assets to be included for
16 estate tax purposes in the estate of a natural person who has the
17 power to remove a trustee or appoint a trustee, or both, and the
18 assets would not be included in the estate of the natural person if
19 the trustee did not possess the power to make an adjustment;

20 (g) If the trustee is a beneficiary of the trust; or

21 (h) If the trustee is not a beneficiary, but the adjustment would
22 benefit him directly or indirectly.

23 4. If paragraph (e), (f), (g) or (h) of subsection 3 applies to a
24 trustee and there is more than one trustee, a cotrustee to whom the
25 provision does not apply may make the adjustment unless the
26 exercise of the power by the remaining trustee or trustees is not
27 permitted by the terms of the trust.

28 5. A trustee may release the entire power conferred by
29 subsection 1 or may release only the power to adjust from income
30 to principal or the power to adjust from principal to income if he is
31 uncertain about whether possessing or exercising the power will
32 cause a result described in paragraphs (a) to (f), inclusive, or (h)
33 of subsection 3 or if he determines that possessing or exercising
34 the power will or may deprive the trust of a tax benefit or impose a
35 tax burden not described in subsection 3. The release may be
36 permanent or for a specified period, including a period measured
37 by the life of a natural person.

38 6. Terms of a trust that limit the power of a trustee to make
39 an adjustment between principal and income do not affect the
40 application of this section unless it is clear from the terms of the
41 trust that the terms are intended to deny the trustee the power of
42 adjustment conferred by subsection 1.

43 **Sec. 19.** After a decedent dies, in the case of an estate, or
44 after an income interest in a trust ends, the following rules apply:



- 1 1. A fiduciary of an estate or of a terminating income interest
2 shall determine the amount of net income and net principal
3 receipts received from property specifically given to a beneficiary
4 under the rules in sections 21 to 44, inclusive, of this act which
5 apply to trustees and the rules in subsection 5. He shall distribute
6 the net income and net principal receipts to the beneficiary who is
7 to receive the specific property.
- 8 2. A fiduciary shall determine the remaining net income of a
9 decedent's estate or a terminating income interest under the rules
10 in sections 21 to 44, inclusive, of this act which apply to trustees
11 and by:
- 12 (a) Including in net income all income from property used to
13 discharge liabilities;
- 14 (b) Paying from income or principal, in his discretion, fees of
15 attorneys, accountants and fiduciaries, court costs and other
16 expenses of administration, and interest on death taxes, but he
17 may pay those expenses from income of property passing to a trust
18 for which he claims an estate tax marital or charitable deduction
19 only to the extent that the payment of those expenses from income
20 will not cause the reduction or loss of the deduction; and
- 21 (c) Paying from principal all other disbursements made or
22 incurred in connection with the settlement of a decedent's estate
23 or the winding up of a terminating income interest, including
24 debts, funeral expenses, disposition of remains, family allowances,
25 and death taxes and related penalties that are apportioned to the
26 estate or terminating income interest by the will, the terms of the
27 trust, or applicable law.
- 28 3. A fiduciary shall distribute to a beneficiary who receives a
29 pecuniary amount outright the interest or any other amount
30 provided by the will, the terms of the trust, or applicable law from
31 net income determined under subsection 2 or from principal to the
32 extent that net income is insufficient. If a beneficiary is to receive
33 a pecuniary amount outright from a trust after an income interest
34 ends and no interest or other amount is provided for by the terms
35 of the trust or applicable law, the fiduciary shall distribute the
36 interest or other amount to which the beneficiary would be entitled
37 under applicable law if the pecuniary amount were required to be
38 paid under a will.
- 39 4. A fiduciary shall distribute the net income remaining after
40 distributions required by subsection 3 in the manner described in
41 section 20 of this act to all other beneficiaries, including a
42 beneficiary who receives a pecuniary amount in trust, even if he
43 holds an unqualified power to withdraw assets from the trust or
44 other presently exercisable general power of appointment over the
45 trust.



1 5. A fiduciary may not reduce principal or income receipts
2 from property described in subsection 1 because of a payment
3 described in section 39 or 40 of this act to the extent that the will,
4 the terms of the trust, or applicable law requires him to make the
5 payment from assets other than the property or to the extent he
6 recovers or expects to recover the payment from a third party. The
7 net income and principal receipts from the property are
8 determined by including all the amounts the fiduciary receives or
9 pays with respect to the property, whether those amounts accrued
10 or became due before, on, or after the date of a decedent's death
11 or an income interest's terminating event, and by making a
12 reasonable provision for amounts that he believes the estate or
13 terminating income interest may become obligated to pay after the
14 property is distributed.

15 **Sec. 20.** 1. Each beneficiary described in subsection 4 of
16 section 19 of this act is entitled to receive a portion of the net
17 income equal to his fractional interest in undistributed principal
18 assets, using values as of the date of distribution. If a fiduciary
19 makes more than one distribution of assets to beneficiaries to
20 whom this section applies, each beneficiary, including one who
21 does not receive part of the distribution, is entitled, as of each date
22 of distribution, to the net income the fiduciary has received after
23 the date of death or terminating event or earlier date of
24 distribution but has not distributed as of the current date of
25 distribution.

26 2. In determining a beneficiary's share of net income, the
27 following rules apply:

28 (a) He is entitled to receive a portion of the net income equal
29 to his fractional interest in the undistributed principal assets
30 immediately before the date of distribution, including assets that
31 later may be sold to meet principal obligations.

32 (b) His fractional interest in the undistributed principal assets
33 must be calculated without regard to property specifically given to
34 a beneficiary and property required to pay pecuniary amounts not
35 in trust.

36 (c) His fractional interest in the undistributed principal assets
37 must be calculated on the basis of the aggregate value of those
38 assets as of the date of distribution without reducing the value by
39 any unpaid principal obligation.

40 (d) The date of distribution for purposes of this section may be
41 the date as of which the fiduciary calculates the value of the assets
42 if that date is reasonably near the date on which assets are
43 actually distributed.

44 3. If a fiduciary does not distribute all the collected but
45 undistributed net income to each person as of a date of



1 *distribution, he shall maintain appropriate records showing the*
2 *interest of each beneficiary in that net income.*

3 *4. A trustee may apply the rules in this section, to the extent*
4 *that he considers it appropriate, to net gain or loss realized after*
5 *the date of death or terminating event or earlier date of*
6 *distribution from the disposition of a principal asset if this section*
7 *applies to the income from the asset.*

8 **Sec. 21.** *1. An income beneficiary is entitled to net income*
9 *from the date on which the income interest begins. An income*
10 *interest begins on the date specified in the terms of the trust or, if*
11 *no date is specified, on the date an asset becomes subject to a trust*
12 *or successive income interest.*

13 *2. An asset becomes subject to a trust:*

14 *(a) On the date it is transferred to the trust in the case of an*
15 *asset that is transferred to a trust during the transferor's life;*

16 *(b) On the date of a testator's death in the case of an asset that*
17 *becomes subject to a trust by reason of a will, even if there is an*
18 *intervening period of administration of the testator's estate; or*

19 *(c) On the date of the death of a natural person in the case of*
20 *an asset that is transferred to a fiduciary by a third party because*
21 *of the death of the natural person.*

22 *3. An asset becomes subject to a successive income interest*
23 *on the day after the preceding income interest ends, as determined*
24 *under subsection 4, even if there is an intervening period of*
25 *administration to wind up the preceding income interest.*

26 *4. An income interest ends on the day before an income*
27 *beneficiary dies or another terminating event occurs, or on the last*
28 *day of a period during which there is no beneficiary to whom a*
29 *trustee may distribute income.*

30 **Sec. 22.** *1. A trustee shall allocate an income receipt or*
31 *disbursement other than one to which subsection 1 of section 19 of*
32 *this act applies to principal if its due date occurs before a decedent*
33 *dies in the case of an estate or before an income interest begins in*
34 *the case of a trust or successive income interest.*

35 *2. A trustee shall allocate an income receipt or disbursement*
36 *to income if its due date occurs on or after the date on which a*
37 *decedent dies or an income interest begins and it is a periodic due*
38 *date. An income receipt or disbursement must be treated as*
39 *accruing from day to day if its due date is not periodic or it has no*
40 *due date. The portion of the receipt or disbursement accruing*
41 *before the date on which a decedent dies or an income interest*
42 *begins must be allocated to principal and the balance must be*
43 *allocated to income.*

44 *3. An item of income or an obligation is due on the date the*
45 *payor is required to make a payment. If a date for payment is not*



1 *stated, there is no due date for the purposes of sections 15 to 44,*
2 *inclusive, of this act. Distributions to shareholders or other owners*
3 *from an entity to which section 24 of this act applies are deemed to*
4 *be due on the date fixed by the entity for determining who is*
5 *entitled to receive the distribution or, if no date is fixed, on the*
6 *date of declaration of the distribution. A due date is periodic for*
7 *receipts or disbursements that must be paid at regular intervals*
8 *under a lease or an obligation to pay interest or if an entity*
9 *customarily makes distributions at regular intervals.*

10 **Sec. 23.** 1. *As used in this section, "undistributed income"*
11 *means net income received before the date on which an income*
12 *interest ends. The term does not include an item of income or*
13 *expense that is due or accrued or net income that has been added*
14 *or is required to be added to principal under the terms of the trust.*

15 2. *When a mandatory income interest ends, the trustee shall*
16 *pay to a mandatory income beneficiary who survives that date, or*
17 *the estate of a deceased mandatory income beneficiary whose*
18 *death causes the interest to end, his share of the undistributed*
19 *income that is not disposed of under the terms of the trust unless*
20 *he has an unqualified power to revoke more than 5 percent of the*
21 *trust immediately before the income interest ends. In the latter*
22 *case, the undistributed income from the portion of the trust that*
23 *may be revoked must be added to principal.*

24 3. *When a trustee's obligation to pay a fixed annuity or a*
25 *fixed fraction of the value of the trust's assets ends, he shall*
26 *prorate the final payment if and to the extent required by*
27 *applicable law to accomplish a purpose of the trust or its settlor*
28 *relating to income, gift, estate or other tax requirements.*

29 **Sec. 24.** 1. *As used in this section, "entity" means a*
30 *corporation, partnership, limited-liability company, regulated*
31 *investment company, real estate investment trust, common trust*
32 *fund or any other organization in which a trustee has an interest*
33 *other than a trust or estate to which section 25 of this act applies,*
34 *a business or activity to which section 26 of this act applies or an*
35 *asset-backed security to which section 38 of this act applies.*

36 2. *Except as otherwise provided in this section, a trustee shall*
37 *allocate to income money received from an entity.*

38 3. *A trustee shall allocate the following receipts from an*
39 *entity to principal:*

40 (a) *Property other than money;*

41 (b) *Money received in one distribution or a series of related*
42 *distributions in exchange for part or all of a trust's interest in the*
43 *entity;*

44 (c) *Money received in total or partial liquidation of the entity;*
45 *and*



1 (d) Money received from an entity that is a regulated
2 investment company or a real estate investment trust if the money
3 distributed is a capital gain dividend for federal income tax
4 purposes.

5 4. Money is received in partial liquidation:

6 (a) To the extent that the entity, at or near the time of a
7 distribution, indicates that it is a distribution in partial liquidation;
8 or

9 (b) If the total amount of money and property received in a
10 distribution or series of related distributions is greater than 20
11 percent of the entity's gross assets, as shown by the entity's year-
12 end financial statements immediately preceding the initial receipt.

13 5. Money is not received in partial liquidation, nor may it be
14 taken into account under paragraph (b) of subsection 4, to the
15 extent that it does not exceed the amount of income tax that a
16 trustee or beneficiary must pay on taxable income of the entity
17 that distributes the money.

18 6. A trustee may rely upon a statement made by an entity
19 about the source of character of a distribution if the statement is
20 made at or near the time of distribution by the entity's board of
21 directors or other person or group of persons authorized to
22 exercise powers to pay money or transfer property comparable to
23 those of a corporation's board of directors.

24 **Sec. 25.** A trustee shall allocate to income an amount
25 received as a distribution of income from a trust or an estate in
26 which the trust has an interest other than a purchased interest,
27 and a trustee shall allocate to principal an amount received as a
28 distribution of principal from such a trust or estate. If a trustee
29 purchases an interest in a trust that is an investment entity, or a
30 decedent or donor transfers an interest in such a trust to a trustee,
31 section 24 or 38 of this act applies to a receipt from the trust.

32 **Sec. 26. 1.** If a trustee who conducts a business or other
33 activity determines that it is in the best interest of all the
34 beneficiaries to account separately for the business or activity
35 instead of accounting for it as part of the trust's general
36 accounting records, he may maintain separate accounting records
37 for its transactions, whether or not its assets are segregated from
38 other trust assets.

39 2. A trustee who accounts separately for a business or other
40 activity may determine the extent to which its net cash receipts
41 must be retained for working capital, the acquisition or
42 replacement of fixed assets, and other reasonably foreseeable
43 needs of the business or activity, and the extent to which the
44 remaining net cash receipts are accounted for as principal or
45 income in the trust's general accounting records. If a trustee sells



1 *assets of the business or other activity, other than in the ordinary*
2 *course of the business or activity, he shall account for the net*
3 *amount received as principal in the trust's general accounting*
4 *records to the extent he determines that the amount received is no*
5 *longer required in the conduct of the business.*

6 *3. Activities for which a trustee may maintain separate*
7 *accounting records include:*

8 *(a) Retail, manufacturing, service and other traditional*
9 *business activities;*

10 *(b) Farming;*

11 *(c) Raising and selling livestock and other animals;*

12 *(d) Management of rental properties;*

13 *(e) Extraction of minerals and other natural resources;*

14 *(f) Timber operations; and*

15 *(g) Activities to which section 37 of this act applies.*

16 **Sec. 27.** *A trustee shall allocate to principal:*

17 *1. To the extent not allocated to income under sections 15 to*
18 *44, inclusive, of this act, assets received from a transferor during*
19 *the transferor's lifetime, a decedent's estate, a trust with a*
20 *terminating income interest, or a payor under a contract naming*
21 *the trust or its trustee as beneficiary;*

22 *2. Money or other property received from the sale, exchange,*
23 *liquidation or change in form of a principal asset, including*
24 *realized profit, subject to sections 15 to 44, inclusive, of this act;*

25 *3. Amounts recovered from third parties to reimburse the*
26 *trust because of disbursements described in paragraph (g) of*
27 *subsection 1 of section 40 of this act or for other reasons to the*
28 *extent not based on the loss of income;*

29 *4. Proceeds of property taken by eminent domain, but a*
30 *separate award made for the loss of income with respect to an*
31 *accounting period during which a current income beneficiary had*
32 *a mandatory income interest is income;*

33 *5. Net income received in an accounting period during which*
34 *there is no beneficiary to whom a trustee may or must distribute*
35 *income; and*

36 *6. Other receipts as provided in sections 21, 22 and 23 of this*
37 *act.*

38 **Sec. 28.** *To the extent that a trustee accounts for receipts*
39 *from rental property pursuant to this section, he shall allocate to*
40 *income an amount received as rent of real or personal property,*
41 *including an amount received for cancellation or renewal of a*
42 *lease. An amount received as a refundable deposit, including a*
43 *security deposit or a deposit that is to be applied as rent for future*
44 *periods, must be added to principal and held subject to the terms*
45 *of the lease and is not available for distribution to a beneficiary*



1 *until the trustee's contractual obligations have been satisfied with*
2 *respect to that amount.*

3 **Sec. 29.** 1. *An amount received as interest, whether*
4 *determined at a fixed, variable or floating rate, on an obligation to*
5 *pay money to the trustee, including an amount received as*
6 *consideration for prepaying principal, must be allocated to income*
7 *without any provision for amortization of premium.*

8 2. *A trustee shall allocate to principal an amount received*
9 *from the sale, redemption or other disposition of an obligation to*
10 *pay money to him more than 1 year after it is purchased or*
11 *acquired by him, including an obligation whose purchase price or*
12 *value when it is acquired is less than its value at maturity. If the*
13 *obligation matures within 1 year after it is purchased or acquired*
14 *by the trustee, an amount received in excess of its purchase price*
15 *or its value when acquired by the trust must be allocated to*
16 *income.*

17 3. *This section does not apply to an obligation to which*
18 *section 32, 33, 34, 35, 37 or 38 of this act applies.*

19 **Sec. 30.** 1. *Except as otherwise provided in this section, a*
20 *trustee shall allocate to principal the proceeds of a life insurance*
21 *policy or other contract in which the trust or its trustee is named*
22 *as beneficiary, including a contract that insures the trust or its*
23 *trustee against loss for damage to, destruction of, or loss of title to*
24 *a trust asset. He shall allocate dividends on an insurance policy*
25 *to income if the premiums on the policy are paid from income, and*
26 *to principal if the premiums are paid from principal.*

27 2. *A trustee shall allocate to income proceeds of a contract*
28 *that insures him against loss of occupancy or other use by an*
29 *income beneficiary, loss of income, or, subject to section 26 of this*
30 *act, loss of profits from a business.*

31 3. *This section does not apply to a contract to which section*
32 *32 of this act applies.*

33 **Sec. 31.** *If a trustee determines that an allocation between*
34 *principal and income required by section 32, 33, 34, 35 or 38 of*
35 *this act is insubstantial, the trustee may allocate the entire amount*
36 *to principal unless one of the circumstances described in*
37 *subsection 3 of section 18 of this act applies to the allocation. This*
38 *power may be exercised by a cotrustee in the circumstances*
39 *described in subsection 4 of section 18 of this act and may be*
40 *released for the reasons and in the manner described in subsection*
41 *5 of section 18 of this act. An allocation is presumed to be*
42 *insubstantial if:*

43 1. *The amount of the allocation would increase or decrease*
44 *net income in an accounting period, as determined before the*
45 *allocation, by less than 10 percent; or*



1 2. *The value of the asset producing the receipt for which the*
2 *allocation would be made is less than 10 percent of the total value*
3 *of the trust's assets at the beginning of the accounting period.*

4 **Sec. 32.** 1. *As used in this section, "payment" means a*
5 *payment that a trustee may receive over a fixed number of years or*
6 *during the life of one or more natural persons because of services*
7 *rendered or property transferred to the payor in exchange for*
8 *future payments. The term includes a payment made in money or*
9 *property from the payor's general assets or from a separate fund*
10 *created by the payor, including a private or commercial annuity,*
11 *an individual retirement account, and a pension, profit-sharing,*
12 *stock-bonus or stock-ownership plan.*

13 2. *To the extent that a payment is characterized as interest or*
14 *a dividend or a payment made in lieu of interest or a dividend, a*
15 *trustee shall allocate it to income. He shall allocate to principal*
16 *the balance of the payment and any other payment received in the*
17 *same accounting period that is not characterized as interest, a*
18 *dividend or an equivalent payment.*

19 3. *If no part of a payment is characterized as interest, a*
20 *dividend or an equivalent payment, and all or part of the payment*
21 *is required to be made, a trustee shall allocate to income 10*
22 *percent of the part that is required to be made during the*
23 *accounting period and the balance to principal. If no part of a*
24 *payment is required to be made or the payment received is the*
25 *entire amount to which the trustee is entitled, he shall allocate the*
26 *entire payment to principal. For purposes of this subsection, a*
27 *payment is not "required to be made" to the extent that it is made*
28 *because the trustee exercises a right of withdrawal.*

29 4. *If, to obtain an estate tax marital deduction for a trust, a*
30 *trustee must allocate more of a payment to income than provided*
31 *for by this section, he shall allocate to income the additional*
32 *amount necessary to obtain the marital deduction.*

33 5. *This section does not apply to payments to which section 33*
34 *of this act applies.*

35 **Sec. 33.** 1. *As used in this section, "liquidating asset"*
36 *means an asset whose value will diminish or terminate because the*
37 *asset is expected to produce receipts for a period of limited*
38 *duration. The term includes a leasehold, patent, copyright, royalty*
39 *right and right to receive payments during a period of more than 1*
40 *year under an arrangement that does not provide for the payment*
41 *of interest on the unpaid balance. The term does not include a*
42 *payment subject to section 32 of this act, resources subject to*
43 *section 34 of this act, timber subject to section 35 of this act, an*
44 *activity subject to section 37 of this act, an asset subject to section*



1 38 of this act, or any asset for which the trustee establishes a
2 reserve for depreciation under section 41 of this act.

3 2. A trustee shall allocate to income 10 percent of the receipts
4 from a liquidating asset and the balance to principal.

5 **Sec. 34. 1.** To the extent that a trustee accounts for receipts
6 from an interest in minerals or other natural resources pursuant
7 to this section, the trustee shall allocate them as follows:

8 (a) If received as nominal delay rental or nominal annual rent
9 on a lease, a receipt must be allocated to income.

10 (b) If received from a production payment, a receipt must be
11 allocated to income if and to the extent that the agreement
12 creating the production payment provides a factor for interest or
13 its equivalent. The balance must be allocated to principal.

14 (c) If an amount received as a royalty, shut-in-well payment,
15 take-or-pay payment, bonus or delay rental is more than nominal,
16 90 percent must be allocated to principal and the balance to
17 income.

18 (d) If an amount is received from a working interest or any
19 other interest not provided for in paragraph (a), (b) or (c), 90
20 percent of the net amount received must be allocated to principal
21 and the balance to income.

22 2. An amount received on account of an interest in water that
23 is renewable must be allocated to income. If the water is not
24 renewable, 90 percent of the amount must be allocated to principal
25 and the balance to income.

26 3. Sections 15 to 44, inclusive, of this act apply whether or
27 not a decedent or donor was extracting minerals, water, or other
28 natural resources before the interest became subject to the trust.

29 4. If a trust owns an interest in minerals, water or other
30 natural resources on October 1, 2003, the trustee may allocate
31 receipts from the interest as provided in sections 15 to 44,
32 inclusive, of this act or in the manner used by the trustee before
33 October 1, 2003. If the trust acquires an interest in minerals, water
34 or other natural resources after October 1, 2003, the trustee shall
35 allocate receipts from the interest as provided in sections 15 to 44,
36 inclusive, of this act.

37 **Sec. 35. 1.** To the extent that a trustee accounts for receipts
38 from the sale of timber and related products pursuant to this
39 section, the trustee shall allocate the net receipts:

40 (a) To income to the extent that the amount of timber removed
41 from the land does not exceed the rate of growth of the timber
42 during the accounting periods in which a beneficiary has a
43 mandatory income interest;



1 (b) *To principal to the extent that the amount of timber*
2 *removed from the land exceeds the rate of growth of timber or the*
3 *net receipts are from the sale of standing timber;*

4 (c) *To or between income and principal if the net receipts are*
5 *from the lease of timberland or from a contract to cut timber from*
6 *land owned by a trust, by determining the amount of timber*
7 *removed from the land under the lease of contract and applying*
8 *the rules in paragraphs (a) and (b); or*

9 (d) *To principal to the extent that advance payments, bonuses*
10 *and other payments are not allocated pursuant to paragraph (a),*
11 *(b) or (c).*

12 2. *In determining net receipts to be allocated pursuant to*
13 *subsection 1, a trustee shall deduct and transfer to principal a*
14 *reasonable amount for depletion.*

15 3. *Sections 15 to 44, inclusive, of this act apply whether or*
16 *not a decedent or transferor was harvesting timber from the*
17 *property before it became subject to the trust.*

18 4. *If a trust owns an interest in timberland on October 1,*
19 *2003, the trustee may allocate net receipts from the sale of timber*
20 *and related products as provided in sections 15 to 44, inclusive, of*
21 *this act or in the manner used by the trustee before October 1,*
22 *2003. If the trust acquires an interest in timberland after*
23 *October 1, 2003, the trustee shall allocate net receipts from the*
24 *sale of timber and related products as provided in sections 15 to*
25 *44, inclusive, of this act.*

26 **Sec. 36.** 1. *If a marital deduction is allowed for all or part*
27 *of a trust whose assets consist substantially of property that does*
28 *not provide the surviving spouse with sufficient income from or*
29 *use of the trust assets, and if the amounts that the trustee transfers*
30 *from principal to income under section 18 of this act and*
31 *distributes to the spouse from principal pursuant to the terms of*
32 *the trust are insufficient to provide the spouse with the beneficial*
33 *enjoyment required to obtain the marital deduction, the spouse*
34 *may require the trustee to make property productive of income,*
35 *convert property within a reasonable time, or exercise the power*
36 *conferred by subsection 1 of section 18 of this act. The trustee may*
37 *decide which action or combination of actions to take.*

38 2. *In cases not governed by subsection 1, proceeds from the*
39 *sale or other disposition of an asset are principal without regard to*
40 *the amount of income the asset produces during any accounting*
41 *period.*

42 **Sec. 37.** 1. *As used in this section, "derivative" means a*
43 *contract of financial instrument or a combination of contracts and*
44 *financial instruments which gives a trust the right or obligation to*
45 *participate in some or all changes in the price of a tangible or*



1 *intangible asset or group of assets, or changes in a rate, an index*
2 *of prices or rates, or other market indicator for an asset or a group*
3 *of assets.*

4 *2. To the extent that a trustee accounts for transactions in*
5 *derivatives pursuant to this section, he shall allocate to principal*
6 *receipts from and disbursements made in connection with those*
7 *transactions.*

8 *3. If a trustee grants an option to buy property from the trust,*
9 *whether or not the trust owns the property when the option is*
10 *granted, grants an option that permits another person to sell*
11 *property to the trust, or acquires an option to buy property for the*
12 *trust or an option to sell an asset owned by the trust, and the*
13 *trustee or other owner of the asset is required to deliver the asset if*
14 *the option is exercised, an amount received for granting the option*
15 *must be allocated to principal. An amount paid to acquire the*
16 *option must be paid from principal. A gain or loss realized upon*
17 *the exercise of an option, including an option granted to a settlor*
18 *of the trust for services rendered, must be allocated to principal.*

19 **Sec. 38.** *1. As used in this section, "asset-backed security"*
20 *means an asset whose value is based upon the right it gives the*
21 *owner to receive distributions from the proceeds of financial assets*
22 *that provide collateral for the security. The term includes an asset*
23 *that gives the owner the right to receive from the collateral*
24 *financial assets only the interest or other current return or only*
25 *the proceeds other than interest or current return. The term does*
26 *not include an asset to which section 24 or 32 of this act applies.*

27 *2. If a trust receives a payment from interest or other current*
28 *return and from other proceeds of the collateral financial assets,*
29 *the trustee shall allocate to income the portion of the payment*
30 *which the payor identifies as being from interest or other current*
31 *return and shall allocate the balance of the payment to principal.*

32 *3. If a trust receives one or more payments in exchange for*
33 *the trust's entire interest in an asset-backed security in one*
34 *accounting period, the trustee shall allocate the payments to*
35 *principal. If a payment is one of a series of payments that will*
36 *result in the liquidation of the trust's interest in the security over*
37 *more than one accounting period, the trustee shall allocate 10*
38 *percent of the payment to income and the balance to principal.*

39 **Sec. 39.** *A trustee shall make the following disbursements*
40 *from income to the extent that they are not disbursements to which*
41 *paragraph (b) or (c) of subsection 2 of section 19 of this act*
42 *applies:*

43 *1. One-half of the regular compensation of the trustee and of*
44 *any person providing advisory or custodial services to the trustee*
45 *concerning investment;*



1 2. *One-half of all expenses for accountings, judicial*
2 *proceedings, or other matters that involve both the income and*
3 *remainder interests;*

4 3. *All the other ordinary expenses incurred in connection*
5 *with the administration, management or preservation of trust*
6 *property and the distribution of income, including interest,*
7 *ordinary repairs, regularly recurring taxes assessed against*
8 *principal, and expenses of a proceeding or other matter that*
9 *concerns primarily the income interest; and*

10 4. *Recurring premiums on insurance covering the loss of a*
11 *principal asset or the loss of income from or use of the asset.*

12 **Sec. 40. 1.** *A trustee shall make the following*
13 *disbursements from principal:*

14 (a) *The remaining one-half of the disbursements described in*
15 *subsections 1 and 2 of section 39 of this act;*

16 (b) *All the trustee's compensation calculated on principal as a*
17 *fee for acceptance, distribution or termination, and disbursements*
18 *made to prepare property for sale;*

19 (c) *Payments on the principal of a trust debt;*

20 (d) *Expenses of a proceeding that concerns primarily*
21 *principal, including a proceeding to construe the trust or to protect*
22 *the trust or its property;*

23 (e) *Premiums paid on a policy of insurance not described in*
24 *subsection 4 of section 39 of this act of which the trust is the*
25 *owner and beneficiary;*

26 (f) *Estate, inheritance and other transfer taxes, including*
27 *penalties, apportioned to the trust; and*

28 (g) *Disbursements related to environmental matters, including*
29 *reclamation, assessing environmental conditions, remedying and*
30 *removing environmental contamination, monitoring remedial*
31 *activities and the release of substances, preventing future releases*
32 *of substances, collecting amounts from persons liable or*
33 *potentially liable for the costs of those activities, penalties imposed*
34 *under environmental laws or regulations and other payments*
35 *made to comply with those laws or regulations, statutory or*
36 *common law claims by third parties, and defending claims based*
37 *on environmental matters.*

38 2. *If a principal asset is encumbered with an obligation that*
39 *requires income from that asset to be paid directly to the creditor,*
40 *the trustee shall transfer from principal to income an amount*
41 *equal to the income paid to the creditor in reduction of the*
42 *principal balance of the obligation.*

43 **Sec. 41. 1.** *As used in this section, "depreciation" means a*
44 *reduction in value due to wear, tear, decay, corrosion or gradual*



1 *obsolescence of a fixed asset having a useful life of more than 1*
2 *year.*

3 *2. A fiduciary may transfer to principal a reasonable amount*
4 *of the net cash receipts from a principal asset that is subject to*
5 *depreciation, but may not transfer any amount for depreciation:*

6 *(a) Of that portion of real property used or available for use by*
7 *a beneficiary as a residence or of tangible personal property held*
8 *or made available for the personal use or enjoyment of a*
9 *beneficiary;*

10 *(b) During the administration of a decedent's estate; or*

11 *(c) Under this section if a trustee is accounting under section*
12 *26 of this act for the business or activity in which the asset is used.*

13 *3. An amount transferred to principal need not be held as a*
14 *separate fund.*

15 **Sec. 42.** *1. If a trustee makes or expects to make a principal*
16 *disbursement described in this section, he may transfer an*
17 *appropriate amount from income to principal in one or more*
18 *accounting periods to reimburse principal or to provide a reserve*
19 *for future principal disbursements.*

20 *2. Principal disbursements to which subsection 1 applies*
21 *include the following, but only to the extent that the trustee has*
22 *not been and does not expect to be reimbursed by a third party:*

23 *(a) An amount chargeable to income but paid from principal*
24 *because it is unusually large, including extraordinary repairs;*

25 *(b) A capital improvement to a principal asset, whether in the*
26 *form of changes to an existing asset or the construction of a new*
27 *asset, including special assessments;*

28 *(c) Disbursements made to prepare property for rental,*
29 *including tenant allowances, leasehold improvements and*
30 *broker's commissions;*

31 *(d) Periodic payments on an obligation secured by a principal*
32 *asset to the extent that the amount transferred from income to*
33 *principal for depreciation is less than the periodic payments; and*

34 *(e) Disbursements described in paragraph (g) of subsection 1*
35 *of section 40 of this act.*

36 *3. If the asset whose ownership gives rise to the*
37 *disbursements becomes subject to a successive income interest*
38 *after an income interest ends, a trustee may continue to transfer*
39 *amounts from income to principal as provided in subsection 1.*

40 **Sec. 43.** *1. A tax required to be paid by a trustee based on*
41 *receipts allocated to income must be paid from income.*

42 *2. A tax required to be paid by a trustee based on receipts*
43 *allocated to principal must be paid from principal, even if the tax*
44 *is called an income tax by the taxing authority.*



1 3. A tax required to be paid by a trustee on the trust's share
2 of an entity's taxable income must be paid proportionately:

3 (a) From income to the extent that receipts from the entity are
4 allocated to income; and

5 (b) From principal to the extent that:

6 (1) Receipts from the entity are allocated to principal; and

7 (2) The trust's share of the entity's taxable income exceeds
8 the total receipts described in paragraph (a) and subparagraph (1).

9 4. For the purposes of this section, receipts allocated to
10 principal or income must be reduced by the amount distributed to
11 a beneficiary from principal or income for which the trust receives
12 a deduction in calculating the tax.

13 **Sec. 44.** 1. A fiduciary may make adjustments between
14 principal and income to offset the shifting of economic interests or
15 tax benefits between income beneficiaries and remainder
16 beneficiaries which arise from:

17 (a) Elections and decisions, other than those described in
18 subsection 2, that the fiduciary makes from time to time regarding
19 tax matters;

20 (b) An income tax or any other tax that is imposed upon the
21 fiduciary or a beneficiary as a result of a transaction involving or
22 a distribution from the estate or the trust; or

23 (c) The ownership by an estate or trust of an interest in an
24 entity whose taxable income, whether or not distributed, is
25 includable in the taxable income of the estate, the trust, or a
26 beneficiary.

27 2. If the amount of an estate tax marital deduction or
28 charitable contribution deduction is reduced because a fiduciary
29 deducts an amount paid from principal for income tax purposes
30 instead of deducting it for estate tax purposes, and as a result
31 estate taxes paid from principal are increased and income taxes
32 paid by an estate, trust or beneficiary are decreased, each estate,
33 trust or beneficiary that benefits from the decrease in income tax
34 shall reimburse the principal from which the increase in estate tax
35 is paid. The total reimbursement must equal the increase in the
36 estate tax to the extent that the principal used to pay the increase
37 would have qualified for a marital deduction or charitable
38 contribution deduction but for the payment. The proportionate
39 share of the reimbursement for each estate, trust or beneficiary
40 whose income taxes are reduced must be the same as its
41 proportionate share of the total decrease in income tax. An estate
42 or trust shall reimburse principal from income.

43 **Sec. 45.** NRS 423.235 is hereby amended to read as follows:

44 423.235 1. Except as otherwise provided in NRS 423.230, all
45 money received by a child in the Northern Nevada Children's Home



1 or the Southern Nevada Children's Home, including, but not limited
2 to, social security benefits, benefits paid to heirs of United States
3 employees and payments payable by the United States through the
4 Department of Veterans Affairs, must be held by the Superintendent
5 in trust for the child.

6 2. The Superintendent as trustee shall accumulate such money
7 during the period the child is a ward of the State under the
8 provisions of ~~[chapter 423 of NRS.]~~ *this chapter* and shall invest
9 such money subject to the provisions of ~~[NRS 164.050, 164.060 and~~
10 ~~164.065.]~~ *sections 2 to 14, inclusive, of this act.*

11 3. The Superintendent shall:

12 (a) Keep a separate account for each child who receives money.

13 (b) Deduct from the account the costs for the care and support of
14 the child that are provided by the State, excluding any amount for
15 which a county is responsible. If the child is placed in foster care,
16 money in the account may be used for payments to a foster parent.
17 Any surplus remaining may be expended for extraordinary items
18 deemed beneficial to the child.

19 (c) Remit any surplus balance to the child or his parent or legal
20 guardian upon release from the school.

21 4. The Superintendent may be removed as trustee of such
22 money only upon application to the district court for the county in
23 which the children's home is located. The district court may, for
24 good cause shown and upon notice to the beneficiary, relieve the
25 Superintendent from his duties as trustee.

26 **Sec. 46.** NRS 452.160 is hereby amended to read as follows:

27 452.160 1. Endowment care funds must not be used for any
28 purpose other than to provide, through income only, for the reserves
29 authorized by law and for the endowment care of the cemetery in
30 accordance with the resolutions, bylaws, rules and regulations or
31 other actions or instruments of the cemetery authority.

32 2. The funds must be invested and reinvested in:

33 (a) Bonds of the United States;

34 (b) Bonds of this state or the bonds of other states;

35 (c) Bonds of counties or municipalities of any state;

36 (d) With the approval of the Administrator, first mortgages or
37 first trust deeds on improved real estate;

38 (e) Deposits in any bank, credit union or savings and loan
39 association that is federally insured or insured by a private insurer
40 approved pursuant to NRS 678.755; or

41 (f) With the written approval of the Administrator, any
42 investment which would be proper under the provisions of ~~[NRS~~
43 ~~164.050.]~~ *sections 2 to 14, inclusive, of this act.*

44 Pending investment as provided in this subsection, such funds may
45 be deposited in an account in any savings bank, credit union or



1 savings and loan association which is qualified to do business in the
2 State of Nevada and which is federally insured or insured by a
3 private insurer approved pursuant to NRS 678.755.

4 3. Each cemetery authority operating an endowment care
5 cemetery shall submit to the Administrator annually, on a form
6 prescribed and adopted by the Administrator, a financial statement
7 of the condition of its endowment care fund. The statement must be
8 accompanied by a fee of \$10. If the statement is not received by the
9 Administrator , he may, after giving 10 days' notice, revoke the
10 cemetery authority's certificate of authority.

11 **Sec. 47.** NRS 452.720 is hereby amended to read as follows:

12 452.720 1. Money held in trust for the endowment care of a
13 cemetery for pets must not be used for any purpose other than to
14 provide, through income only, for the reserves authorized by law
15 and for the endowment care of the cemetery in accordance with the
16 resolutions, bylaws, rules and regulations or other actions or
17 instruments of the cemetery authority.

18 2. The money must be invested and reinvested in:

- 19 (a) Bonds of the United States;
- 20 (b) Bonds of this state or the bonds of other states;
- 21 (c) Bonds of counties or municipalities of any state;
- 22 (d) With the approval of the Administrator, first mortgages or
23 first trust deeds on improved real estate;
- 24 (e) Deposits in any bank, credit union or savings and loan
25 association that is federally insured or insured by a private insurer
26 approved pursuant to NRS 678.755; or
- 27 (f) With the written approval of the Administrator, any
28 investment which would be proper under the provisions of ~~NRS~~
29 ~~164.050.] sections 2 to 14, inclusive, of this act.~~

30 Pending investment as provided in this subsection, such money may
31 be deposited in an account in any savings bank, credit union or
32 savings and loan association which is qualified to do business in this
33 state and which is federally insured or insured by a private insurer
34 approved pursuant to NRS 678.755.

35 3. Each cemetery authority shall annually submit to the
36 Administrator, on a form prescribed and adopted by the
37 Administrator, a financial statement of the condition of its trust fund
38 for the endowment care of the cemetery. The statement must be
39 accompanied by a fee of \$10. If the statement is not received by the
40 Administrator , he may, after giving 10 days' notice, revoke the
41 cemetery authority's certificate of authority.

42 **Sec. 48.** NRS 150.235, 164.050, 164.060, 164.065, 164.140,
43 164.150, 164.160, 164.170, 164.180, 164.190, 164.200, 164.210,
44 164.220, 164.230, 164.240, 164.250, 164.260, 164.270, 164.280,



- 1 164.290, 164.300, 164.310, 164.320, 164.330, 164.340, 164.350,
2 164.360 and 164.370 are hereby repealed.

LEADLINES OF REPEALED SECTIONS

150.235 Use of income from securities or other property of trust estate, life estate or estate for years created by will.

164.050 Standard of care in investing and managing property.

164.060 Investments and loans secured by Federal Housing Administrator.

164.065 Investments in farm loan bonds and other obligations issued by federal land banks and banks for cooperatives.

164.140 Short title.

164.150 Definitions.

164.160 "Income" defined.

164.170 "Income beneficiary" defined.

164.180 "Inventory value" defined.

164.190 "Principal" defined.

164.200 "Remainderman" defined.

164.210 "Trustee" defined.

164.220 Duty of trustee as to receipts and expenditures.

164.230 Charges.

164.240 When right to income arises; apportionment of income.

164.250 Expenses of settlement of estate of decedent; income earned during administration of estate.

164.260 Corporate distributions.

164.270 Premiums and discounts on bonds.

164.280 Business and farming operations.

164.290 Disposition of natural resources.

164.300 Timber.

164.310 Other property subject to depletion.

164.320 Underproductive property.

164.330 Charges against income.

164.340 Charges against principal.

164.350 Apportionment of regularly recurring charges payable from income.

164.360 Applicability.

164.370 Uniformity of interpretation.

