

The House Committee on Judiciary offers the following substitute to HB 121:

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."

H. B. 121 (SUB)

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 1.75 percent / year on the first	\$ 500,000.00
490 1.25 percent / year on the next	\$ 500,000.00
491 1.00 percent / year on the next	\$ 1,000,000.00
492 0.85 percent / year on the next	\$ 3,000,000.00
493 0.50 percent / year on values over	\$ 5,000,000.00

494 If the cash and market value of the
495 other principal assets are:

<u>Annual fee:</u>
496 <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> <u>\$8,750.00 plus 1.25 percent of the excess</u> 499 <u>\$1 million</u> <u>over \$500,000.00.</u>
500 <u>More than \$1 million but less than \$2</u> <u>\$15,000.00 plus 1.00 percent of the excess</u> 501 <u>million</u> <u>over \$1 million.</u>
502 <u>More than \$2 million but less than \$5</u> <u>\$25,000.00 plus 0.85 percent of the excess</u> 503 <u>million</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.