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

A BILL TO BE ENTITLED
AN ACT

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

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.
Article 9 of Chapter 6 of Title 44 of the Official Code of Georgia Annotated, relating to the Uniform Statutory Rule Against Perpetuities, is amended by revising paragraph (2) of subsections (a) through (c) of Code Section 44-6-201, relating to the validity of nonvested property interest or power of appointment, as follows:

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

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

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 SECTION 2.
Said article is further amended by revising Code Section 44-6-203, relating to reform of disposition by court to approximate transferor's plan of distribution, as follows:

"44-6-203.
Upon the petition of an interested person, a court shall reform a disposition in the manner that most closely approximates the transferor's manifested plan of distribution and is within the 90 number of years allowed by paragraph (2) of subsection (a), paragraph (2) of subsection (b), or paragraph (2) of subsection (c) of Code Section 44-6-201 if:

(1) A nonvested property interest or a power of appointment becomes invalid under Code Section 44-6-201;
(2) A class gift is not but might still become invalid under Code Section 44-6-201 and the time has arrived when the share of any class member is to take effect in possession or enjoyment; or
(3) A nonvested property interest that is not validated by paragraph (1) of subsection (a) of Code Section 44-6-201 can vest, but not within 90 years after its creation."

 SECTION 3.
Said article is further amended by revising Code Section 44-6-205, relating to the applicability of this article and court reform of nonvested dispositions created before this article became effective, as follows:

"44-6-205.
(a) Except as extended by subsection (b) of this Code section, this article applies to a nonvested property interest or a power of appointment that is created on or after May 1, 1990 July 1, 2018. For purposes of this Code section only, a nonvested property interest or a power of appointment created by the exercise of a power of appointment is created when the power is irrevocably exercised or when a revocable exercise becomes irrevocable.
(b) With respect to a nonvested property interest or a power of appointment that was created before May 1, 1990 July 1, 2018, and that violates this state's rule against perpetuities as that rule existed before May 1, 1990 July 1, 2018, a court upon the petition of an interested party may exercise its equitable power to reform the disposition in the manner that most closely approximates the transferor's manifested plan of distribution and is within the limits of the rule against perpetuities applicable when the nonvested property interest or power of appointment was created."

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SECTION 4.

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

"53-12-8.

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

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

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

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

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

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

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

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

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

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

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

(5) A personal representative of a decedent's estate may represent and bind persons interested in such estate; and
(6) An ancestor may represent and bind an ancestor's minor or unborn descendant if a conservator or guardian for such descendant has not been appointed.

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

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

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

SECTION 5.

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

"53-12-9.

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

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

(c) A nonjudicial settlement agreement:

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

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

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

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

**SECTION 6.**

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

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

**SECTION 7.**

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

"53-12-61.

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

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

(1) An agent under a power of attorney only to the extent expressly authorized by the power of attorney and the terms of the trust;"
(2) The settlor's conservator with the approval of the court supervising the conservatorship if an agent is not so authorized; or

(3) The settlor's guardian with the approval of the court supervising the guardianship if an agent is not so authorized and a conservator has not been appointed.

(c) Following the settlor's death the court shall approve a petition to:

(1) Modify a noncharitable irrevocable trust if all the beneficiaries consent, the trustee has received notice of the proposed modification, and the court concludes that modification is not inconsistent with any material purpose of such trust; and

(2) Terminate a noncharitable irrevocable trust if all the beneficiaries consent, the trustee has received notice of the proposed termination, and the court concludes that continuance of such trust is not necessary to achieve any material purpose of such trust.

(d) The court may, upon petition:

(1) Modify the trust if, owing to circumstances not anticipated by the settlor, modification would further the purposes of such trust;

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

(3) Modify the trust by the appointment of an additional trustee or special fiduciary if such appointment is necessary or helpful to the administration of such trust;

(4) Modify the trust to achieve the settlor's tax objectives, with such modification to have either prospective or retroactive effect;

(5) Order the division of a single trust into two or more trusts or the consolidation of two or more trusts, whether created by the same or different trust instruments or by the same or different persons, into a single trust if the division or consolidation would be helpful to the administration of such trust or trusts; or

(6) Terminate a trust and order distribution of the trust property if the:

(A) Costs of administration are such that the continuance of such trust, the establishment of such trust if it is to be established, or the distribution from a probate estate would defeat or substantially impair the purposes of such trust;

(B) Purpose of such trust has been fulfilled or become illegal or impossible to fulfill; or

(C) Continuance of such trust would impair the accomplishment of the purposes of such trust.

(e) A proceeding to approve a proposed modification or termination under this Code section may be commenced by a trustee or beneficiary. A proceeding to approve a proposed modification or termination under subsection (b) of this Code section may be commenced by a trustee, beneficiary, or settlor. In the case of an unfunded testamentary
trust, a petition for modification or termination under this Code section may be filed by the
personal representative of the settlor's estate.

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

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

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

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

SECTION 8.

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

"53-12-62.

(a) The court may:

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

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

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

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

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

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

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

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

1. ‘Original trust’ refers to the trust from which principal is being distributed.
2. ‘Second trust’ refers to the trust to which assets are being distributed from the original trust, whether a separate trust or an amended version of the original trust.

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

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

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

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

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

1. Describe the manner in which such trustee intends to exercise such power;

2. Specify the date such trustee proposes to distribute to the second trust; and

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

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

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

(f) This Code section shall not be construed to abridge the right of any trustee who has a power of invasion to distribute property in further trust that arises under any other law or under common law, and nothing in this Code section shall be construed to imply that the
common law does not permit the exercise of a power to invade the principal of a trust in
the manner authorized under subsection (b) of this Code section.

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

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

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

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

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

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

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

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

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

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

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

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

(p) This Code section shall not apply to a trust held solely for charitable purposes."
SECTION 9.
Said chapter is further amended by repealing Code Section 53-12-63, relating to division and consolidation of trusts, and designating it as reserved.

SECTION 10.
Said chapter is further amended by repealing Code Section 53-12-64, relating to termination of trusts, and designating it as reserved.

SECTION 11.
Said chapter is further amended by revising subsection (a) of Code Section 53-12-65, relating to modification or termination of uneconomic trust, as follows:
"(a) After notice to the qualified beneficiaries, the trustee of a trust consisting of trust property either having a total value less than $50,000.00 or for which the trustee's annual fee for administering the trust is 5 percent or more of the market value of the principal assets of the trust as of the last day of the preceding trust accounting year may terminate the trust if the trustee concludes that the value of the trust property is insufficient to justify the cost of administration, provided that in the case of a cemetery trust, notice shall be given to the Attorney General. For purposes of this subsection, the term 'cemetery trust' means a trust the sole purpose of which is to hold and invest property to be used for the maintenance and care of cemetery plots."

SECTION 12.
Said chapter is further amended by revising Code Section 53-12-81, relating to limitations on creditors' rights, as follows:
"53-12-81.
A transferee or creditor of a beneficiary shall not compel the trustee to pay any amount that is payable only in the trustee's discretion regardless of whether the discretion is expressed in the form of a standard of distribution, including, but not limited to, health, education, maintenance, and support, and whether such trustee is also a beneficiary. This Code section shall not apply to the extent of the proportion of trust property attributable to the beneficiary's contribution."

SECTION 13.
Said chapter is further amended by revising Code Section 53-12-82, relating to creditors' claims against settlor, as follows:
Whether or not the trust instrument contains a spendthrift provision, the following rules shall apply:

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

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

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

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

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

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

(A) 'Inter vivos marital trust' means:

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

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

(iii) Another trust to the extent such trust's assets are attributable to a trust described in division (i) or (ii) of this subparagraph.
(B) 'Settlor's spouse' means the spouse of the settlor at the time of the creation of an inter vivos marital trust, regardless of whether such spouse is married to the settlor at the time of such spouse's death.

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

SECTION 14.

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

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

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

SECTION 15.

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

"53-12-210.

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

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

(2) If one or more of the qualified beneficiaries who are not sui juris have no guardian or conservator, and all of the other qualified beneficiaries, including the guardians or conservators of qualified beneficiaries who are not sui juris, and the trustee are in agreement, any sui juris qualified beneficiary or the guardian or conservator of a beneficiary who is not sui juris or the trustee shall petition the court to approve a
modification of the trust instrument or agreement relating to the trustee's compensation. The court shall appoint a guardian ad litem for each beneficiary who is not sui juris and who does not have a guardian or conservator, and service of notice of the petition for modification of the trustee's compensation shall be made on each such guardian ad litem.

The court shall hold a hearing and shall either allow or deny the modification that is requested in the petition. By petition pursuant to Code Section 53-12-61.

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

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

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

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

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

(2) With respect to an individual trustee:

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

(B) An annual fee calculated in accordance with the following schedule based upon the cash and the market value of the other principal assets valued as of the last day of the
trust accounting year prorated based on the length of service by the such trustee during that year:

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<th>Percentage Fee</th>
<th>Market Value</th>
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<td>0.50 percent / year on values over</td>
<td>$5,000,000.00</td>
</tr>
</tbody>
</table>

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

<table>
<thead>
<tr>
<th>Annual fee:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>$500,000.00 or less</td>
<td>1.75 percent of the cash and market value of the other principal assets.</td>
</tr>
<tr>
<td>More than $500,000.00 but less than $1 million</td>
<td>$8,750.00 plus 1.25 percent of the excess over $500,000.00.</td>
</tr>
<tr>
<td>$1 million</td>
<td>$15,000.00 plus 1.00 percent of the excess over $1 million.</td>
</tr>
<tr>
<td>More than $1 million but less than $2 million</td>
<td>$25,000.00 plus 0.85 percent of the excess over $2 million.</td>
</tr>
<tr>
<td>More than $2 million but less than $5 million</td>
<td>$50,500.00 plus 0.50 percent of the excess over $5 million.</td>
</tr>
<tr>
<td>More than $5 million</td>
<td></td>
</tr>
</tbody>
</table>

SECTION 16.

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

“(a) A trustee who is receiving compensation as described in subsection (c) of Code Section 53-12-210 may petition the court for compensation that is greater than the compensation allowed under that subsection. Service of notice of the petition for extra compensation shall be made on all qualified beneficiaries or their guardians or conservators. The court shall appoint a guardian ad litem for each qualified beneficiary who is not sui juris and who does not have a guardian or conservator, and service of notice of the petition for modification of the trustee's compensation shall be made on each such guardian ad litem.”
SECTION 17.

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

"53-12-220. (a) A trustee may resign:

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

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

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

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

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

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

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

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

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

(b) The petition to the court provided for in paragraph (3) of subsection (a) of this Code section shall be served upon all qualified beneficiaries or their guardians or conservators. The court shall appoint a guardian ad litem for each beneficiary who is not sui juris and who does not have a guardian or conservator, and service of notice of the petition for resignation shall be made on each such guardian ad litem. In approving a trustee's resignation, the court may issue orders and impose conditions reasonably necessary for the protection of the trust property."
The resignation of a trustee shall not relieve the such trustee from liability for any actions prior to the resignation except to the extent the such trustee is relieved by the court in the appropriate proceeding or to the extent relieved by the trust instrument.

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

SECTION 18.

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

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

SECTION 19.

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

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

SECTION 20.

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

"53-12-261.

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

(1) Powers conferred by the trust instrument; and

(2) Except as limited by the trust instrument:
(A) All powers over the trust property that an unmarried competent owner has over
individually owned property;

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

(C) Any other powers conferred by this chapter.

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

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

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

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

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

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

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

(D) To determine whether the liabilities incurred in the conduct of the business are to
be chargeable solely to the part of the trust property held by the fiduciary set aside for
use in the business or to the trust property held by the fiduciary as a whole.
In all cases in which the fiduciary is required to file accounts in any court or in any other public office, it shall not be necessary to itemize receipts, disbursements, and distributions of property; but it shall be sufficient for the fiduciary to show in the account a single figure or consolidation of figures, and the fiduciary shall be permitted to account for money and property received from the business and any payments made to the business in lump sum without itemization;

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

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

(A) To operate the farm with hired labor, tenants, or sharecroppers;
(B) To lease or rent the farm for cash or for a share of the crops;
(C) To purchase or otherwise acquire farm machinery, equipment, and livestock;
(D) To construct, repair, and improve farm buildings of all kinds needed, in the fiduciary's judgment, for the operation of the farm;
(E) To make or obtain loans or advances at the prevailing rate or rates of interest for farm purposes, such as for production, harvesting, or marketing; or for the construction, repair, or improvement of farm buildings; or for the purchase of farm machinery, equipment, or livestock;
(F) To employ approved soil conservation practices, in order to conserve, improve, and maintain the fertility and productivity of the soil;
(G) To protect, manage, and improve the timber and forest on the farm and to sell the timber and forest products when it is to the best interest of the trust persons to whom the fiduciary owes a duty of care;
(H) To ditch, dam, and drain damp or wet fields and areas of the farm when and where needed;
(I) To engage in the production of livestock, poultry, or dairy products and to construct such fences and buildings and to plant pastures and crops as may be necessary to carry on such operations;
(J) To market the products of the farm; and
(K) In general, to employ good husbandry in the farming operation;

(6) To manage real property:

(A) To improve, manage, protect, and subdivide any real property;
(B) To dedicate, or withdraw from dedication, parks, streets, highways, or alleys;
(C) To terminate any subdivision or part thereof;
(D) To borrow money for the purposes authorized by this paragraph for the periods of
time and upon the terms and conditions as to rates, maturities, and renewals as the
fiduciary shall deem advisable and to mortgage or otherwise encumber the property or
part thereof, whether in possession or reversion;
(E) To lease the property or part thereof, the lease to commence at the present or in the
future, upon the terms and conditions, including options to renew or purchase, and for
the period or periods of time as the fiduciary deems advisable even though the period
or periods may extend beyond the duration of the estate or trust;
(F) To make gravel, sand, oil, gas, and other mineral leases, contracts, licenses,
conveyances, or grants of every nature and kind which are lawful in the jurisdiction in
which the property lies;
(G) To manage and improve timber and forests on the property, to sell the timber and
forest products, and to make grants, leases, and contracts with respect thereto;
(H) To modify, renew, or extend leases;
(I) To employ agents to rent and collect rents;
(J) To create easements and to release, convey, or assign any right, title, or interest
with respect to any easement on the property or part thereof;
(K) To erect, repair, or renovate any building or other improvement on the property
and to remove or demolish any building or other improvement in whole or in part; and
(L) To deal with the property and every part thereof in all other ways and for such
other purposes or considerations as it would be lawful for any person owning the same
to deal with the such property either in the same or in different ways from those
specified elsewhere in this paragraph;
(7) To lease personal property of the trust held by the fiduciary or part thereof, the lease
to commence at the present or in the future, upon the terms and conditions, including
options to renew or purchase, and for the period or periods of time as the fiduciary deems
advisable even though the period or periods may extend beyond the duration of the estate
or trust;
(8)(A) To pay debts, taxes, assessments, compensation of the fiduciary, and other
expenses incurred in the collection, care, administration, and protection of the trust
property held by the fiduciary; and
(B) To pay from the estate or trust all charges that the fiduciary deems necessary or
appropriate to comply with laws regulating environmental conditions and to remedy or
ameliorate any such conditions which the fiduciary determines adversely affect the trust
property held by the fiduciary or otherwise are liabilities of the estate or trust and to
apportion all such charges among the several bequests and trusts and the interests of the beneficiaries in such manner as the fiduciary deems fair, prudent, and equitable under the circumstances;

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

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

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

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

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

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

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

(14) To hold a security in the name of a nominee or in other form without disclosure of the fiduciary relationship, so that title to the security may pass by delivery; but the
fiduciary shall be liable for any act of the nominee in connection with the security so held;
(15) To exercise all options, rights, and privileges to convert stocks, bonds, debentures, notes, mortgages, or other property into other stocks, bonds, debentures, notes, mortgages, or other property; to subscribe for other or additional stocks, bonds, debentures, notes, mortgages, or other property; and to hold the stocks, bonds, debentures, notes, mortgages, or other property so acquired as investments of the estate or trust so long as the fiduciary shall deem advisable;
(16) To unite with other owners of property similar to any which may be held at any time in the trust by the fiduciary, in carrying out any plan for the consolidation or merger, dissolution or liquidation, foreclosure, lease, or sale of the property or the incorporation or reincorporation, reorganization, or readjustment of the capital or financial structure of any corporation, company, or association the securities of which may form any portion of an estate or trust; to become and serve as a member of a shareholders' or bondholders' protective committee; to deposit securities in accordance with any plan agreed upon; to pay any assessments, expenses, or sums of money that may be required for the protection or furtherance of the interest of the beneficiaries of any such plan; and to receive as investments of the estate or trust any securities issued as a result of the execution of such plan;
(17) To adjust the interest rate from time to time on any obligation, whether secured or unsecured, constituting a part of the estate or trust;
(18) To continue any obligation, whether secured or unsecured, upon and after maturity, with or without renewal or extension, upon such terms as the fiduciary shall deem advisable, without regard to the value of the security, if any, at the time of the continuance;
(19) To foreclose, as an incident to the collection of any bond, note, or other obligation, any deed to secure debt or any mortgage, deed of trust, or other lien securing the bond, note, or other obligation and to bid in the property at the foreclosure sale or to acquire the property by deed from the mortgagor or obligor without foreclosure; and to retain the property so bid in or taken over without foreclosure;
(20) To carry such insurance coverage as the fiduciary shall deem advisable;
(21) To collect, receive, and issue receipts for rents, issues, profits, and income of the estate or trust;
(22)(A) To compromise, adjust, mediate, arbitrate, or otherwise deal with and settle claims involving the trust or the trustee fiduciary or the property held by the fiduciary;
(B) To compromise, adjust, mediate, arbitrate, bring or defend actions on, abandon, or otherwise deal with and settle claims in favor of or against the estate or trust as the
fiduciary shall deem advisable; the fiduciary's decision shall be conclusive between the fiduciary and the beneficiaries of the trust to whom the fiduciary owes a duty of care and the person against or for whom the claim is asserted, in the absence of fraud by such persons and, in the absence of fraud, bad faith, or gross negligence of the fiduciary, shall be conclusive between the fiduciary and the beneficiaries of the trust to whom the fiduciary owes a duty of care; and
(C) To compromise all debts, the collection of which are doubtful, belonging to the estate or trust when such settlements will advance the interests of those represented;
(23) To employ and compensate, out of income or principal or both and in such proportion as the fiduciary shall deem advisable, persons deemed by the fiduciary needful to advise or assist in the administration of any the estate or trust, including, but not limited to, agents, accountants, brokers, attorneys at law, attorneys in fact, investment brokers, rental agents, realtors, appraisers, and tax specialists; and to do so without liability for any neglect, omission, misconduct, or default of the agent or representative, provided such person was selected and retained with due care on the part of the fiduciary;
(24) To acquire, receive, hold, and retain undivided the principal of several trusts created by a single trust instrument until division shall become necessary in order to make distributions; to hold, manage, invest, reinvest, and account for the several shares or parts of shares by appropriate entries in the fiduciary's books of account and to allocate to each share or part of share its proportionate part of all receipts and expenses; provided, however, that this paragraph shall not defer the vesting in possession of any share or part of share of the trust;
(25) To set up proper and reasonable reserves for taxes, assessments, insurance premiums, depreciation, obsolescence, amortization, depletion of mineral or timber properties, repairs, improvements, and general maintenance of buildings or other property out of rents, profits, or other income received;
(26) To value assets of the trust property held by the fiduciary and to distribute them such property in cash or in kind, or partly in cash and partly in kind, in divided or undivided interests, as the fiduciary finds to be most practical and in the best interest of the distributees, the fiduciary being able to distribute types of assets differently among the distributees;
(27) To transfer money or other property distributable to a beneficiary who is under age 21, an adult for whom a guardian or conservator has been appointed, or an adult who the fiduciary reasonably believes is incapacitated by distributing such money or property directly to the beneficiary or applying it for the beneficiary's benefit, or by:
(A) Distributing it to the beneficiary's conservator or, if the beneficiary does not have a conservator, the beneficiary's guardian;
(B) Distributing it to the beneficiary's custodian under 'The Georgia Transfers to Minors Act' or similar state law and, for that purpose, creating a custodianship and designating a custodian;

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

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

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

(28) To determine:

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

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

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

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

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

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

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

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

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

(3) 'Trustee' or 'fiduciary' includes the personal representative.
SECTION 21.

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

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

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

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

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

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

(3) 'Trustee' or 'fiduciary' includes the personal representative; and

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

SECTION 22.

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

"53-12-264. The qualified beneficiaries of a trust that omits any of the powers in Code Section 53-12-261 may by unanimous consent authorize but not require the court to grant to the trustee those powers. With respect to any qualified beneficiary who is not sui juris, such consent may be given by the duly appointed conservator, if any, or if none, by the duly appointed guardian, if any; or if none, by either parent in the case of a minor; or if none, by a guardian ad litem appointed to represent the qualified beneficiary who is not sui juris."

SECTION 23.

Said chapter is further amended by revising Code Section 53-12-303, relating to relief of liability, as follows:
"53-12-303.
(a) No provision in a trust instrument shall be effective to relieve the trustee of liability for a breach of trust committed in bad faith or with reckless indifference to the interests of the beneficiaries.
(b) A trustee of a revocable trust shall not be liable to a beneficiary for any act performed or omitted pursuant to written direction from a person holding the power to revoke, including a person to whom the power to direct the trustee to revoke the trust is delegated. If the trust is revocable in part, then this subsection shall apply with respect to the interest of the beneficiary in that part of the trust property.
(c) Whenever a trust reserves to the settlor or vests in an advisory or investment committee or in any other person, including a cotrustee, to the exclusion of one or more trustees, the authority to direct the making or retention of any investment, the excluded trustee shall be liable, if at all, only as a ministerial agent and not as trustee for any loss resulting from the making or retention of any investment pursuant to the authorized direction."

SECTION 24.
Said chapter is further amended by revising subsection (a) of Code Section 53-12-362, relating to conversion to unitrust, as follows:
"(a) Unless expressly prohibited by the trust instrument, a trustee may release the power to adjust under Code Section 53-12-361 and convert a trust into a unitrust as described in this Code section if:
(1) The trustee determines that the conversion will enable the such trustee to better carry out the intent of the settlor or testator and the purposes of the trust;
(2) The trustee gives written notice of the such trustee's intention to release the power to adjust and to convert the trust into a unitrust and of how the unitrust will operate, including what initial decisions the such trustee will make under this Code section, to:
(A) The settlor, if living;
(B) All living persons who are currently receiving or eligible to receive distributions of income of the trust; and
(C) Without regard to the exercise of any power of appointment, all living persons who would receive principal of the trust if the trust were to terminate at the time of the giving of such notice and all living persons who would receive or be eligible to receive distributions of income or principal of the trust if the interests of all of the beneficiaries currently eligible to receive income under subparagraph (B) of this paragraph were to terminate at the time of the giving of such notice."
If a beneficiary is not sui juris, such notice shall be given to the beneficiary's conservator, if any, and if the beneficiary has no conservator, to the beneficiary's guardian, including, in the case of a minor beneficiary, the beneficiary's natural guardian;”

SECTION 25.

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

"ARTICLE 18

53-12-500.

As used in this article, the term:

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

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

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

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

53-12-501.

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

(b) This article shall not apply to:

(1) A power of appointment;
(2) A power to appoint or remove a trustee or trust director;

(3) A power of a settlor to revoke the trust or amend the trust instrument;

(4) A power of a beneficiary over a trust to the extent the exercise or nonexercise of the power affects the beneficial interest of the beneficiary or a person represented by the beneficiary under Code Section 53-12-8 with respect to the exercise or nonexercise of the power; or

(5) A power over a trust if:
   (A) The terms of the trust provide such power is held in a nonfiduciary capacity; and
   (B) Such power must be held in a nonfiduciary capacity to achieve the settlor's tax objectives.

(c) Except as otherwise provided in the trust instrument, for purposes of this Code section a power that is both a power of appointment and a power of direction shall be deemed a power of appointment and not a power of direction.

53-12-502.

(a) Subject to this Code section, a trust instrument may grant powers of direction to a trust director.

(b) A trust director shall be subject to the same rules as a trustee in a like position and under similar circumstances in the exercise or nonexercise of a power of direction regarding:
   (1) A payback provision in the trust necessary to comply with the reimbursement requirements of Medicaid law in Section 1917 of the Social Security Act, 42 U.S.C. Section 1396p(d)(4)(A), as it existed on February 1, 2018, and regulations issued thereunder; and
   (2) A charitable interest in the trust.

(c) The powers of direction of a trust director who is also a beneficiary shall be subject to the limitations of Code Section 53-12-270.

(d) In the case of a power to modify the trust:
   (1) The duties or liabilities of a trustee may not be enlarged without the trustee's express consent; and
   (2) A trustee shall not be liable for failing to act in accordance with a modification or termination of a trust of which the trustee had no notice.

53-12-503.

(a) Except as otherwise provided in this Code section, with respect to a power of direction:
(1) A trust director shall have the same fiduciary duty and liability in the exercise or
nonexercise of the power of direction as a trustee in a like position and under similar
circumstances; and
(2) The trust instrument may vary the trust director's duty or liability to the same extent
the trust instrument could vary the duty or liability of a trustee in a like position and
under similar circumstances.
(b) A trust instrument may make the existence of a trust director's power of direction
contingent upon the occurrence of certain events, including, but not limited to, a request
to the trust director from a beneficiary or other similar party.
(c) A trust instrument may empower a trust director to delegate a power of direction to a
trustee and provide that, upon written acceptance of such delegation by the trustee, the
trustee shall assume the fiduciary duties and liabilities conferred by the power of direction
until such time as the trust director or trustee terminates the delegation by written notice.
(d) Subject to subsection (g) of this Code section, a trust director shall:
   (1) Keep trustees and other trust directors reasonably informed of the exercise or
nonexercise of the trust director's power of direction to the extent such exercise or
nonexercise is relevant to the party's powers and duties regarding the trust; and
   (2) Respond to reasonable requests from trustees and other trust directors for information
to the extent such information is relevant to the party's powers and duties regarding the
trust.
(e) A trust director acting in reliance on information provided by a trustee or another trust
director shall not be liable for a breach of trust to the extent the breach resulted from such
reliance, unless by so acting the trust director engages in willful misconduct.
(f) Except as otherwise provided in the trust instrument, if a trust director is licensed,
certified, or otherwise authorized or permitted by law other than this article to provide
health care in the ordinary course of the trust director's business or practice of a profession,
to the extent the trust director acts in such capacity, the trust director shall have no duty or
liability under this article.
(g)(1) Except as otherwise provided in the trust instrument, a trust director shall not have
a duty to:
   (A) Monitor a trustee or another trust director regarding matters outside the scope of
the trust director's powers of direction; or
   (B) Inform or give advice to a settlor, beneficiary, trustee, or another trust director
concerning an instance in which the director might have acted differently than a trustee
or another trust director.
(2) By taking one of the actions described in paragraph (1) of this subsection, a trust
director shall not assume any of the duties excluded by this subsection.
(h) A trust instrument may impose a duty or liability on a trust director in addition to the
duties and liabilities under this Code section.

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

53-12-504.

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

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

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

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

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

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

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

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

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

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

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

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

(F) Petition the court regarding a trust director's action, inaction, capacity, or any
similar matter; or
(G) Inform or give advice to a settlor, beneficiary, trustee, or trust director concerning
an instance in which the trustee might have acted differently than the trust director.

(2) By taking one of the actions described in paragraph (1) of this Code section, a
directed trustee does not assume any of the duties excluded by this subsection.

(f) An exercise of a power of direction under which a trust director may release a trustee
from liability for breach of trust shall not be effective if the release was induced by willful
misconduct or the provision of false or incomplete information by the trustee.

(g) A directed trustee that has reasonable doubt about a duty imposed by this Code section
may petition the court for instructions.

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

53-12-506.
(a) Except as otherwise provided in the trust instrument, the rules applicable to a trustee
shall apply to a trust director regarding:

1. Appointment and vacancies under Code Section 53-12-201;
2. Acceptance under Code Section 53-12-202;
3. Giving of a bond under Code Section 53-12-203;
4. Co-trustees under Code Section 53-12-204;
5. Compensation and reimbursement of expenses under Code Sections 53-12-210
   through 53-12-214;
6. Resignation under Code Section 53-12-220;
7. Removal under Code Section 53-12-221; and
8. Service under Code Section 53-12-320.

(b) In an action against a trust director for breach of trust, the trust director may assert the
same defenses a trustee in a like position and under similar circumstances could assert in
an action for breach of trust against the trustee.

(c) By accepting appointment as a trust director of a trust subject to this article, a trust
director submits to personal jurisdiction of the courts of this state regarding any matter
related to a power or duty of a trust director. This subsection shall not preclude use of
another method to obtain jurisdiction over a trust director.”
SECTION 26.

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