

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND TWENTY-FIRST LEGISLATURE

FIRST SPECIAL SESSION
August 21, 2003 to August 22, 2003

The General Effective Date For
First Special Session
Non-Emergency Laws Is
November 22, 2003

SECOND REGULAR SESSION
January 7, 2004 to January 30, 2004

The General Effective Date For
Second Regular Session
Non-Emergency Laws Is
April 30, 2004

SECOND SPECIAL SESSION
February 3, 2004 to April 30, 2004

The General Effective Date For
Second Special Session
Non-Emergency Laws Is
July 30, 2004

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

Penmor Lithographers
Lewiston, Maine
2004

bureau constitutes a separate violation subject to fine.

C. The Attorney General may bring an action to seek fines under this subsection, to enjoin violations of this subchapter and for any other available remedy.

Sec. 2. Report on safety efforts. By January 15, 2005 and by January 15th of each year thereafter, representatives of a trade association designated by forest landowners and forest management companies engaged in the practice of reforestation work shall report to the joint standing committee of the Legislature having jurisdiction over labor matters on a safety program designed to provide training, including driver training, first aid training and other appropriate safety training, and to improve safety standards, safety equipment and vehicles in reforestation activities. The report must include, but not be limited to, the number of contractors participating in the safety program in relation to the number operating in the State and a thorough summary of the substance of the training.

Sec. 3. Working group. The Commissioner of Labor shall convene a working group of interested persons, including, but not limited to, forestry industry representatives, representatives of forestry workers and representatives of the workers' compensation insurance industry to determine what data are available that reflect the safety conditions of forestry workers and related matters and what additional data should reasonably be collected to assess and improve safety conditions. By February 15, 2005, the commissioner shall report on the results of the working group's work and shall recommend to the joint standing committee of the Legislature having jurisdiction over labor matters a system of regularly collecting and reporting such information to policy makers to help inform their efforts to improve safety in the forestry industry.

See title page for effective date.

CHAPTER 617

H.P. 1446 - L.D. 1946

An Act To Promote the Coordination of School Calendars for Career and Technical Education Students

Mandate preamble. This measure requires one or more local units of government to expand or modify activities so as to necessitate additional expenditures from local revenues but does not provide funding for at least 90% of those expenditures. Pursuant to the Constitution of Maine, Article IX,

Section 21, 2/3 of all of the members elected to each House have determined it necessary to enact this measure.

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 20-A MRSA §4801, sub-§2-A is enacted to read:

2-A. Regional school calendars; plan; rules.
Each school administrative unit shall work with affiliated units, as defined in section 8301-A, subsection 1, in its career and technical center or school administrative units in its career and technical region to develop and approve a regional school calendar that aligns the school calendars of sending schools with the school calendars of career and technical education programs in the region. The plan for a regional school calendar must meet the following requirements.

A. There may not be more than 9 dissimilar instructional days within each regional calendar.

B. When career and technical centers or regions overlap, there must be common calendars for each of the schools in those overlapping areas.

C. The authority for approving the regional school calendar must be within the school boards of the local school administrative units.

D. Regional school calendars may have provisions for waivers of the number of dissimilar days for extenuating circumstances.

E. Plans for regional school calendars must be approved and implemented in time for the 2005-2006 school year.

The commissioner shall adopt rules to establish requirements for regional school calendars. Rules adopted pursuant to this subsection are major substantive rules pursuant to Title 5, chapter 375, subchapter 2-A.

See title page for effective date.

CHAPTER 618

H.P. 678 - L.D. 921

An Act To Enact the Uniform Trust Code

Be it enacted by the People of the State of Maine as follows:

PART A

Sec. A-1. 18-B MRSA is enacted to read:

TITLE 18-B**TRUSTS****PART 1****MAINE UNIFORM TRUST CODE****CHAPTER 1****GENERAL PROVISIONS AND DEFINITIONS****§101. Short title**

This Part may be known and cited as "the Maine Uniform Trust Code."

§102. Scope

This Code applies to express trusts, charitable or noncharitable, and trusts created pursuant to a statute, judgment or decree that requires the trust to be administered in the manner of an express trust.

§103. Definitions

As used in this Code, unless the context otherwise indicates, the following terms have the following meanings.

1. Action. "Action," with respect to an act of a trustee, includes a failure to act.

2. Beneficiary. "Beneficiary" means a person that:

A. Has a present or future beneficial interest in a trust, vested or contingent; or

B. In a capacity other than that of trustee, holds a power of appointment over trust property.

3. Charitable trust. "Charitable trust" means a trust, or portion of a trust, created for a charitable purpose described in section 405, subsection 1.

3-A. Code. "Code" means the Maine Uniform Trust Code.

4. Conservator. "Conservator" means a person appointed by the court to administer an estate of a minor or adult individual.

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

6. Guardian. "Guardian" means a person who has qualified pursuant to court appointment to make decisions regarding the support, care, education, health and welfare of a minor or adult individual. The term does not include a guardian ad litem.

7. Interests of beneficiaries. "Interests of the beneficiaries" means the beneficial interests provided in the terms of the trust.

8. Jurisdiction. "Jurisdiction," with respect to a geographic area, includes a state or country.

9. Person. "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government; governmental subdivision, agency or instrumentality; public corporation; or any other legal or commercial entity.

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

11. Property. "Property" means anything that may be the subject of ownership, whether real or personal, legal or equitable, or any interest therein.

12. Qualified beneficiary. "Qualified beneficiary" means a beneficiary who on the date the beneficiary's qualification is determined:

A. Is a distributee or permissible distributee of trust income or principal;

B. Would be a distributee or permissible distributee of trust income or principal if the interests of the distributees described in paragraph A terminated on that date; or

C. Would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date.

"Qualified beneficiary" does not include a contingent distributee or a contingent permissible distributee of trust income or principal whose interest in the trust is not reasonably expected to vest.

13. Revocable. "Revocable," as applied to a trust, means revocable by the settlor without the consent of the trustee or a person holding an adverse interest.

14. Settlor. "Settlor" means a person, including a testator, who creates or contributes property to a trust. If more than one person creates or contributes property to a trust, each person is a settlor of the portion of the trust property attributable to that person's contribution except to the extent another person has the power to revoke or withdraw that portion.

15. Spendthrift provision. "Spendthrift provision" means a term of a trust that restrains both

voluntary and involuntary transfer of a beneficiary's interest.

16. State. "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States.

17. Terms of trust. "Terms of a trust" means the manifestation of the settlor's intent regarding a trust's provisions as expressed in the trust instrument or as may be established by other evidence that would be admissible in a judicial proceeding.

18. Trust instrument. "Trust instrument" means an instrument executed by the settlor that contains terms of the trust, including any amendments to the instrument.

19. Trustee. "Trustee" includes an original, additional and successor trustee, and a cotrustee, whether or not appointed or confirmed by a court.

§104. Knowledge

1. Person. Subject to subsection 2, a person has knowledge of a fact if the person:

- A. Has actual knowledge of it;
- B. Has received a notice or notification of it; or
- C. From all the facts and circumstances known to the person at the time in question, has reason to know it.

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

§105. Default and mandatory rules

1. Code governs. Except as otherwise provided in the terms of the trust, this Code governs the duties and powers of a trustee, relations among trustees and the rights and interests of a beneficiary.

2. Terms prevail; exceptions. The terms of a trust prevail over any provision of this Code except:

- A. The requirements for creating a trust;
- B. The duty of a trustee to act in good faith and in accordance with the purposes of the trust;
- C. The requirement that a trust and its terms be for the benefit of its beneficiaries and that the trust have a purpose that is lawful, not contrary to public policy and possible to achieve;
- D. The power of the court to modify or terminate a trust under sections 410 to 416;
- E. The effect of a spendthrift provision and the rights of certain creditors and assignees to reach a trust as provided in chapter 5;
- F. The power of the court under section 702 to require, dispense with, modify or terminate a bond;
- G. The power of the court under section 708, subsection 2 to adjust a trustee's compensation specified in the terms of the trust that is unreasonably low or high;
- H. The duty under section 813, subsection 2, paragraphs B and C to notify qualified beneficiaries of an irrevocable trust who have attained 25 years of age of the existence of the trust, of the identity of the trustee and of their right to request trustee's reports;
- I. The duty under section 813, subsection 1 to respond to the request of a qualified beneficiary of an irrevocable trust for trustee's reports and other information reasonably related to the administration of a trust;
- J. The effect of an exculpatory term under section 1008;
- K. The rights under sections 1010 to 1013 of a person other than a trustee or beneficiary;
- L. Periods of limitation for commencing a judicial proceeding;
- M. The power of the court to take such action and exercise such jurisdiction as may be necessary in the interests of justice; and
- N. The subject matter jurisdiction of the court and venue for commencing a proceeding as provided in sections 203 and 204.

§106. Common law of trusts; principles of equity

The common law of trusts and principles of equity supplement this Code, except to the extent modified by this Code or another statute of this State.

§107. Governing law

The meaning and effect of the terms of a trust are determined by:

1. Law of jurisdiction designated; exception.

The law of the jurisdiction designated in the terms unless the designation of that jurisdiction's law is contrary to a strong public policy of the jurisdiction having the most significant relationship to the matter at issue; or

2. Law of jurisdiction with most significant relationship. In the absence of a controlling designation in the terms of the trust, the law of the jurisdiction having the most significant relationship to the matter at issue.

§108. Principal place of administration

1. Terms of trust controlling. Without precluding other means for establishing a sufficient connection with the designated jurisdiction, terms of a trust designating the principal place of administration are valid and controlling if:

A. A trustee's principal place of business is located in or a trustee is a resident of the designated jurisdiction; or

B. All or part of the administration occurs in the designated jurisdiction.

2. Duty of trustee. A trustee is under a continuing duty to administer the trust at a place appropriate to its purposes, its administration and the interests of the beneficiaries.

3. Transfer of place of administration. Without precluding the right of the court to order, approve or disapprove a transfer, the trustee, in furtherance of the duty prescribed by subsection 2, may transfer the trust's principal place of administration to another state or to a jurisdiction outside of the United States.

4. Notice of transfer of place of administration. The trustee shall notify the qualified beneficiaries of a proposed transfer of a trust's principal place of administration not less than 60 days before initiating the transfer. The notice of proposed transfer must include:

A. The name of the jurisdiction to which the principal place of administration is to be transferred;

B. The address and telephone number at the new location at which the trustee can be contacted;

C. An explanation of the reasons for the proposed transfer;

D. The date on which the proposed transfer is anticipated to occur; and

E. The date, which may not be less than 60 days after the giving of the notice, by which the qualified beneficiary must notify the trustee of an objection to the proposed transfer.

5. Objection to transfer. The authority of a trustee under this section to transfer a trust's principal place of administration terminates if a qualified beneficiary notifies the trustee of an objection to the proposed transfer on or before the date specified in the notice.

6. Transfer property to successor trustee. In connection with a transfer of the trust's principal place of administration, the trustee may transfer some or all of the trust property to a successor trustee designated in the terms of the trust or appointed pursuant to section 704.

§109. Methods and waiver of notice

1. Manner. Notice to a person under this Code or the sending of a document to a person under this Code must be accomplished in a manner reasonably suitable under the circumstances and likely to result in receipt of the notice or document. Permissible methods of notice or for sending a document include first-class mail, personal delivery, delivery to the person's last known place of residence or place of business or a properly directed electronic message.

2. Notice not required. Notice otherwise required under this Code or a document otherwise required to be sent under this Code need not be provided to a person whose identity or location is unknown to and not reasonably ascertainable by the trustee.

3. Waiver. Notice under this Code or the sending of a document under this Code may be waived by the person to be notified or sent the document.

4. Notice of judicial proceeding. Notice of a judicial proceeding must be given as provided in the applicable Maine Rules of Civil Procedure.

§110. Others treated as qualified beneficiaries

1. Charitable organization or person to enforce trust. A charitable organization expressly designated to receive distributions under the terms of a charitable trust or a person appointed to enforce a trust created for the care of an animal or another noncharitable purpose as provided in section 408 or 409 has the rights of a qualified beneficiary under this Code.

2. Attorney General. The Attorney General has the rights of a qualified beneficiary with respect to a charitable trust having its principal place of administration in this State.

§111. Nonjudicial settlement agreements

1. Interested persons defined. For purposes of this section, "interested persons" means persons whose consent would be required in order to achieve a binding settlement were the settlement to be approved by the court.

2. Binding nonjudicial settlement agreement. Except as otherwise provided in subsection 3, interested persons may enter into a binding nonjudicial settlement agreement with respect to any matter involving a trust.

3. Validity of nonjudicial settlement agreement. A nonjudicial settlement agreement is 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.

4. Matters of nonjudicial settlement agreement. Matters that may be resolved by a nonjudicial settlement agreement include:

A. The interpretation or construction of the terms of the trust;

B. The approval of a trustee's report or accounting;

C. Direction to a trustee to refrain from performing a particular act or the grant to a trustee of any necessary or desirable power;

D. The resignation or appointment of a trustee and the determination of a trustee's compensation;

E. Transfer of a trust's principal place of administration; and

F. Liability of a trustee for an action relating to the trust.

5. Court approval. Any interested person may request the court to approve a nonjudicial settlement agreement, to determine whether the representation as provided in chapter 3 was adequate and to determine whether the agreement contains terms and conditions the court could have properly approved.

§112. Rules of construction

The rules of construction that apply in this State to the interpretation of and disposition of property by will also apply as appropriate to the interpretation of

the terms of a trust and the disposition of the trust property.

CHAPTER 2

JUDICIAL PROCEEDINGS

§201. Role of court in administration of trust

1. Intervention. The court may intervene in the administration of a trust to the extent its jurisdiction is invoked by an interested person or as provided by law.

2. Continuing judicial supervision. A trust is not subject to continuing judicial supervision unless ordered by the court.

3. Matter involving trust's administration. A judicial proceeding involving a trust may relate to any matter involving the trust's administration, including a request for instructions and an action to declare rights.

§202. Jurisdiction over trustee and beneficiary

1. Trustee. By accepting the trusteeship of a trust having its principal place of administration in this State or by moving the principal place of administration to this State, the trustee submits personally to the jurisdiction of the courts of this State regarding any matter involving the trust.

2. Beneficiaries; recipients. With respect to their interests in the trust, the beneficiaries of a trust having its principal place of administration in this State are subject to the jurisdiction of the courts of this State regarding any matter involving the trust. By accepting a distribution from such a trust, the recipient submits personally to the jurisdiction of the courts of this State regarding any matter involving the trust.

3. Not exclusive. This section does not preclude other methods of obtaining jurisdiction over a trustee, beneficiary or other person receiving property from the trust.

§203. Subject matter jurisdiction

1. Concurrent jurisdiction. The Probate Court and the Superior Court have concurrent jurisdiction of all proceedings in this State involving a trust.

2. Alternative dispute resolution not precluded. This section does not preclude judicial or nonjudicial alternative dispute resolution.

§204. Venue

1. Trust. Except as otherwise provided in subsection 2, venue for a judicial proceeding involving a trust is in the county of this State in which the trust's principal place of administration is or will be located and, if the trust is created by will and the estate is not

yet closed, in the county in which the decedent's estate is being administered.

2. Appointment of trustee. If a trust has no trustee, venue for a judicial proceeding for the appointment of a trustee is in a county of this State in which a beneficiary resides, in a county in which any trust property is located and, if the trust is created by will, in the county in which the decedent's estate was or is being administered.

CHAPTER 3

REPRESENTATION

§301. Representation; basic effect

1. Notice. Notice to a person who may represent and bind another person under this chapter has the same effect as if notice were given directly to the other person.

2. Consent. The consent of a person who may represent and bind another person under this chapter is binding on the person represented unless the person represented objects to the representation before the consent would otherwise have become effective.

3. Notice and consent on settlor's behalf. Except as otherwise provided in sections 411 and 602, a person who under this chapter may represent a settlor who lacks capacity may receive notice and give a binding consent on the settlor's behalf.

§302. Representation by holder of general testamentary power of appointment

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

§303. Representation by fiduciaries and parents

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. Conservator. A conservator may represent and bind the estate that the conservator controls;

2. Guardian. A guardian may represent and bind the ward if a conservator of the ward's estate has not been appointed;

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

4. Trustee. A trustee may represent and bind the beneficiaries of the trust;

5. Personal representative. A personal representative of a decedent's estate may represent and bind persons interested in the estate; and

6. Parent. A parent may represent and bind the parent's minor or unborn child if a conservator or guardian for the child has not been appointed.

§304. Representation by person having substantially identical interest

Unless otherwise represented, a minor, an 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 the particular question or dispute, but only to the extent there is no conflict of interest between the representative and the person represented.

§305. Appointment of representative

1. Interest not represented; representation inadequate. If the court determines that an interest is not represented under this chapter, 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, an incapacitated or unborn individual or a person whose identity or location is unknown. A representative may be appointed to represent several persons or interests.

2. Scope of representation. A representative may act on behalf of the individual represented with respect to any matter arising under this Code, whether or not a judicial proceeding concerning the trust is pending.

3. Consider general benefit. In making decisions, a representative may consider general benefit accruing to the living members of the individual's family.

CHAPTER 4

CREATION, VALIDITY, MODIFICATION AND TERMINATION OF TRUST

§401. Methods of creating trust

A trust may be created by:

1. Transfer of property. Transfer of property to another person as trustee during the settlor's lifetime or by will or other disposition taking effect upon the settlor's death;

2. Declaration. Declaration by the owner of property that the owner holds identifiable property as trustee; or

3. Exercise of power. Exercise of a power of appointment in favor of a trustee.

§402. Requirements for creation

1. Requirements. A trust is created only if:

A. The settlor has capacity to create a trust;

B. The settlor indicates an intention to create the trust;

C. The trust has a definite beneficiary or is:

(1) A charitable trust;

(2) A trust for the care of an animal, as provided in section 408; or

(3) A trust for a noncharitable purpose, as provided in section 409;

D. The trustee has duties to perform; and

E. The same person is not the sole trustee and sole beneficiary.

2. Definite beneficiary. A beneficiary is definite if the beneficiary can be ascertained now or in the future, subject to any applicable rule against perpetuities.

3. Power to select beneficiary; failure of power. A power in a trustee to select a beneficiary from an indefinite class is valid. If the power is not exercised within a reasonable time, the power fails and the property subject to the power passes to the persons who would have taken the property had the power not been conferred.

§403. Trusts created in other jurisdictions

A trust not created by will is validly created if its creation complies with the law of the jurisdiction in which the trust instrument was executed or the law of the jurisdiction in which at the time of creation:

1. Settlor. The settlor was domiciled, had a place of abode or was a national;

2. Trustee. A trustee was domiciled or had a place of business; or

3. Trust property. Any trust property was located.

§404. Trust purposes

A trust may be created only to the extent its purposes are lawful, not contrary to public policy and possible to achieve. A trust and its terms must be for the benefit of its beneficiaries.

§405. Charitable purposes; enforcement

1. Purposes. A charitable trust may be created for the relief of poverty; the advancement of education or religion; the promotion of health; governmental or municipal purposes; or other purposes the achievement of which is beneficial to the community.

2. Selection by court. If the terms of a charitable trust do not indicate a particular charitable purpose or beneficiary, the court may select one or more charitable purposes or beneficiaries. The selection must be consistent with the settlor's intention to the extent it can be ascertained.

3. Enforcement. The settlor of a charitable trust, among others, may maintain a proceeding to enforce the trust.

§406. Creation of trust induced by fraud, duress or undue influence

A trust is void to the extent its creation was induced by fraud, duress or undue influence.

§407. Evidence of oral trust

Except as required by a statute other than this Code, a trust need not be evidenced by a trust instrument, but the creation of an oral trust and its terms may be established only by clear and convincing evidence.

§408. Trust for care of animal

1. To provide care for animal; termination. A trust may be created to provide for the care of an animal alive during the settlor's lifetime. The trust terminates upon the death of the animal or, if the trust was created to provide for the care of more than one animal alive during the settlor's lifetime, upon the death of the last surviving animal.

2. Enforcement. A trust authorized by this section may be enforced by a person appointed in the terms of the trust or, if no person is so appointed, by a person appointed by the court. A person having an interest in the welfare of the animal may request the court to appoint a person to enforce the trust or to remove a person appointed.

3. Intended use of property. Property of a trust authorized by this section may be applied only to its intended use, except to the extent the court determines that the value of the trust property exceeds the amount required for the intended use. Except as otherwise provided in the terms of the trust, property not

required for the intended use must be distributed to the settlor, if then living, otherwise, to the settlor's successors in interest.

§409. Noncharitable trust without ascertainable beneficiary

Except as otherwise provided in section 408 or by another statute, the following rules apply.

1. Noncharitable purpose. A trust may be created for a noncharitable purpose without a definite or definitely ascertainable beneficiary or for a noncharitable but otherwise valid purpose to be selected by the trustee.

2. Enforcement. A trust authorized by this section may be enforced by a person appointed in the terms of the trust or, if no person is so appointed, by a person appointed by the court.

3. Intended use of property. Property of a trust authorized by this section may be applied only to its intended use, except to the extent the court determines that the value of the trust property exceeds the amount required for the intended use. Except as otherwise provided in the terms of the trust, property not required for the intended use must be distributed to the settlor, if then living, otherwise, to the settlor's successors in interest.

§410. Modification or termination of trust; proceedings for approval or disapproval

1. Termination. In addition to the methods of termination prescribed by sections 411 through 414, a trust terminates to the extent the trust is revoked or expires pursuant to its terms, no purpose of the trust remains to be achieved or the purposes of the trust have become unlawful, contrary to public policy or impossible to achieve.

2. Modification or termination proceeding. A proceeding to approve or disapprove a proposed modification or termination under sections 411 to 416, or trust combination or division under section 417, may be commenced by a trustee or beneficiary, and a proceeding to approve or disapprove a proposed modification or termination under section 411 may be commenced by the settlor. The settlor of a charitable trust may maintain a proceeding to modify the trust under section 413.

§411. Modification or termination of noncharitable irrevocable trust by consent

1. Consent of settlor and all beneficiaries. A noncharitable irrevocable trust may be modified or terminated upon consent of the settlor and all beneficiaries, even if the modification or termination is inconsistent with a material purpose of the trust. A

settlor's power to consent to a trust's modification or termination may be exercised by an agent under a power of attorney only to the extent expressly authorized by the power of attorney or the terms of the trust; by the settlor's conservator with the approval of the court supervising the conservatorship if an agent is not so authorized; or by 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.

2. Consent of beneficiaries. A noncharitable irrevocable trust may be terminated upon consent of all of the beneficiaries if the court concludes that continuance of the trust is not necessary to achieve any material purpose of the trust. A noncharitable irrevocable trust may be modified upon consent of all of the beneficiaries if the court concludes that modification is not inconsistent with a material purpose of the trust.

3. Spendthrift provision. A spendthrift provision in the terms of the trust is not presumed to constitute a material purpose of the trust.

4. Distribution after termination. Upon termination of a trust under subsection 1 or 2, the trustee shall distribute the trust property as agreed by the beneficiaries.

5. Court approval without unanimous consent. If not all of the beneficiaries consent to a proposed modification or termination of the trust under subsection 1 or 2, the modification or termination may be approved by the court if the court is satisfied that:

A. If all of the beneficiaries had consented, the trust could have been modified or terminated under this section; and

B. The interests of a beneficiary who does not consent will be adequately protected.

§412. Modification or termination because of unanticipated circumstances or inability to administer trust effectively

1. Modification or termination. The court may modify the administrative or dispositive terms of a trust or terminate the trust if, because of circumstances not anticipated by the settlor, modification or termination will further the purposes of the trust. To the extent practicable, the modification must be made in accordance with the settlor's probable intention.

2. Modification of administrative terms. The court may modify the administrative terms of a trust if continuation of the trust on its existing terms would be impracticable or wasteful or impair the trust's administration.

3. Distribution after termination. Upon termination of a trust under this section, the trustee shall distribute the trust property in a manner consistent with the purposes of the trust.

§413. Cy pres

1. Charitable purpose becomes unlawful, impracticable, impossible to achieve or wasteful. Except as otherwise provided in subsection 2, if a particular charitable purpose of a trust becomes unlawful, impracticable, impossible to achieve or wasteful:

A. The trust does not fail, in whole or in part;

B. The trust property does not revert to the settlor or the settlor's successors in interest; and

C. The court may apply cy pres to modify or terminate the trust by directing that the trust property be applied or distributed, in whole or in part, in a manner consistent with the settlor's charitable purposes.

2. Noncharitable beneficiary. A provision in the terms of a charitable trust that would result in distribution of the trust property to a noncharitable beneficiary prevails over the power of the court under subsection 1 to apply cy pres to modify or terminate the trust only if, when the provision takes effect:

A. The trust property is to revert to the settlor and the settlor is still living; or

B. Fewer than 50 years have elapsed since the date of the trust's creation.

§414. Modification or termination of uneconomic trust

1. Termination by trustee after notice. After notice to the qualified beneficiaries, the trustee of a trust consisting of trust property having a total value less than \$100,000 may terminate the trust if the trustee concludes that the value of the trust property is insufficient to justify the cost of administration.

2. Modification, termination, new trustee by court. The court may modify or terminate a trust or remove the trustee and appoint a different trustee if it determines that the value of the trust property is insufficient to justify the cost of administration.

3. Distribution after termination. Upon termination of a trust under this section, the trustee shall distribute the trust property in a manner consistent with the purposes of the trust.

4. Easement for conservation or preservation. This section does not apply to an easement for conservation or preservation.

§415. Reformation to correct mistakes

The court may reform the terms of a trust, even if unambiguous, to conform the terms to the settlor's intention if it is proved by clear and convincing evidence that both the settlor's intent and the terms of the trust were affected by a mistake of fact or law, whether in expression or inducement.

§416. Modification to achieve settlor's tax objectives

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

§417. Combination and division of trusts

After notice to the qualified beneficiaries, a trustee may combine 2 or more trusts into a single trust or divide a trust into 2 or more separate trusts, if the result does not impair rights of any beneficiary or adversely affect achievement of the purposes of the trust.

CHAPTER 5

CREDITOR'S CLAIMS; SPENDTHRIFT AND DISCRETIONARY TRUSTS

§501. Rights of beneficiary's creditor or assignee

To the extent a beneficiary's interest is not protected by a spendthrift provision, the court may authorize a creditor or assignee of the beneficiary to reach the beneficiary's interest by attachment of present or future distributions to or for the benefit of the beneficiary or other means. The court may limit the award to such relief as is appropriate under the circumstances.

§502. Spendthrift provision

1. Restrains voluntary and involuntary transfers. A spendthrift provision is valid only if it restrains both voluntary and involuntary transfer of a beneficiary's interest.

2. Terminology. A term of a trust providing that the interest of a beneficiary is held subject to a "spendthrift trust," or words of similar import, is sufficient to restrain both voluntary and involuntary transfer of the beneficiary's interest.

3. No transfer by beneficiary; creditors and assignees. A beneficiary may not transfer an interest in a trust in violation of a valid spendthrift provision and, except as otherwise provided in this chapter, a creditor or assignee of the beneficiary may not reach

the interest or a distribution by the trustee before its receipt by the beneficiary.

§503. Exceptions to spendthrift provision

There are no exceptions to spendthrift provisions except as provided in sections 504, 505 and 506.

§504. Discretionary trusts; effect of standard

1. Creditor may not compel distribution.

Whether or not a trust contains a spendthrift provision, a creditor of a beneficiary may not compel a distribution that is subject to the trustee's discretion, even if:

A. The discretion is expressed in the form of a standard of distribution; or

B. The trustee has abused the discretion.

2. Right of beneficiary not limited. This section does not limit the right of a beneficiary to maintain a judicial proceeding against a trustee for an abuse of discretion or failure to comply with a standard for distribution.

§505. Creditor's claim against settlor

1. Creditor's claims. Whether or not the terms of a trust contain a spendthrift provision, the following rules apply.

A. During the lifetime of the settlor, the property of a revocable trust is subject to claims of the settlor's creditors.

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

C. After the death of a settlor, and subject to the settlor's right to direct the source from which liabilities will be paid, the property of a trust that was revocable at the settlor's death is subject to claims of the settlor's creditors, costs of administration of the settlor's estate, the expenses of the settlor's funeral and disposal of remains, and statutory allowances to a surviving spouse and children to the extent the settlor's probate estate is inadequate to satisfy those claims, costs, expenses and allowances.

2. Holder of power. For purposes of this section:

A. During the period the power may be exercised, the holder of a power of withdrawal is

treated in the same manner as the settlor of a revocable trust to the extent of the property subject to the power; and

B. Upon the lapse, release or waiver of the power, the holder is treated as the settlor of the trust only to the extent the value of the property affected by the lapse, release, or waiver exceeds the greater of the amount specified in the federal Internal Revenue Code of 1986, Section 2041(b)(2) or 2514(e) or the federal Internal Revenue Code of 1986, Section 2503(b), in each case as in effect on July 1, 2005, or as later amended.

§506. Overdue distribution

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

§507. Personal obligations of trustee

Trust property is not subject to personal obligations of the trustee, even if the trustee becomes insolvent or bankrupt.

CHAPTER 6

REVOCABLE TRUSTS

§601. Capacity of settlor of revocable trust

The capacity required to create, amend, revoke or add property to a revocable trust, or to direct the actions of the trustee of a revocable trust, is the same as that required to make a will.

§602. Revocation or amendment of revocable trust

1. Revocable unless expressly provided.

Unless the terms of a trust expressly provide that the trust is irrevocable, the settlor may revoke or amend the trust. This subsection does not apply to a trust created under an instrument executed before July 1, 2005.

2. Revocable trust with more than one settlor.

If a revocable trust is created or funded by more than one settlor:

A. To the extent the trust consists of community property, the trust may be revoked by either spouse acting alone but may be amended only by joint action of both spouses;

B. To the extent the trust consists of property other than community property, each settlor may

revoke or amend the trust with regard to the portion of the trust property attributable to that settlor's contribution; and

C. Upon the revocation or amendment of the trust by fewer than all of the settlors, the trustee shall notify the other settlors of the revocation or amendment.

3. Revoke or amend. The settlor may revoke or amend a revocable trust:

A. By substantial compliance with a method provided in the terms of the trust; or

B. If the terms of the trust do not provide a method or the method provided in the terms is not expressly made exclusive, by:

(1) A later will or codicil that expressly refers to the trust or specifically devises property that would otherwise have passed according to the terms of the trust; or

(2) Any other method manifesting clear and convincing evidence of the settlor's intent.

4. Delivery of property after revocation. Upon revocation of a revocable trust, the trustee shall deliver the trust property as the settlor directs.

5. Agent expressly authorized. A settlor's powers with respect to revocation, amendment or distribution of trust property may be exercised by an agent under a power of attorney only to the extent expressly authorized by the terms of the trust or the power.

6. Conservator or guardian of settlor. A conservator of the settlor or, if no conservator has been appointed, a guardian of the settlor may exercise a settlor's powers with respect to revocation, amendment or distribution of trust property only with the approval of the court supervising the conservatorship or guardianship.

7. Trustee without knowledge of revocation or amendment. A trustee who does not know that a trust has been revoked or amended is not liable to the settlor or settlor's successors in interest for distributions made and other actions taken on the assumption that the trust had not been amended or revoked.

§603. Settlor's powers; powers of withdrawal

1. Revocable trust. While a trust is revocable and the settlor has capacity to revoke the trust, rights of the beneficiaries are subject to the control of, and the duties of the trustee are owed exclusively to, the settlor.

2. Rights of settlor of revocable trust. During the period the power may be exercised, the holder of a power of withdrawal has the rights of a settlor of a revocable trust under this section to the extent of the property subject to the power.

§604. Limitation on action contesting validity of revocable trust; distribution of trust property

1. Revocable trust. A person may commence a judicial proceeding to contest the validity of a trust that was revocable at the settlor's death within the earlier of:

A. Three years after the settlor's death; or

B. One hundred and twenty days after the trustee sent the person a copy of the trust instrument and a notice informing the person of the trust's existence, of the trustee's name and address and of the time allowed for commencing a proceeding.

2. Trustee liability for distributions. Upon the death of the settlor of a trust that was revocable at the settlor's death, the trustee may proceed to distribute the trust property in accordance with the terms of the trust. The trustee is not subject to liability for doing so unless:

A. The trustee knows of a pending judicial proceeding contesting the validity of the trust; or

B. A potential contestant has notified the trustee of a possible judicial proceeding to contest the trust and a judicial proceeding is commenced within 60 days after the contestant sent the notification.

3. Beneficiary to return distribution. A beneficiary of a trust that is determined to have been invalid is liable to return any distribution received.

CHAPTER 7

OFFICE OF TRUSTEE

§701. Accepting or declining trusteeship

1. Acceptance. Except as otherwise provided in subsection 3, a person designated as trustee accepts the trusteeship:

A. By substantially complying with a method of acceptance provided in the terms of the trust; or

B. If the terms of the trust do not provide a method or the method provided in the terms is not expressly made exclusive, by accepting delivery of the trust property, exercising powers or performing duties as trustee or otherwise indicating acceptance of the trusteeship.

2. Rejection. A person designated as trustee who has not yet accepted the trusteeship may reject the trusteeship. A designated trustee who does not accept the trusteeship within a reasonable time after knowing of the designation is deemed to have rejected the trusteeship.

3. Action without acceptance. A person designated as trustee, without accepting the trusteeship, may:

A. Act to preserve the trust property if, within a reasonable time after acting, the person sends a rejection of the trusteeship to the settlor or, if the settlor is dead or lacks capacity, to a qualified beneficiary; and

B. Inspect or investigate trust property to determine potential liability under environmental or other law or for any other purpose.

§702. Trustee's bond

1. Bond. A trustee shall give bond to secure performance of the trustee's duties only if the court finds that a bond is needed to protect the interests of the beneficiaries or is required by the terms of the trust and the court has not dispensed with the requirement.

2. Amount. The court may specify the amount of a bond, its liabilities, and whether sureties are necessary. The court may modify or terminate a bond at any time.

3. Financial institution. A financial institution qualified to do trust business in this State need not give bond, even if required by the terms of the trust.

4. Cost charged to trust. Unless otherwise directed by the court, the cost of a bond is charged to the trust.

§703. Cotrustees

1. Unanimous decision; majority decision. Cotrustees who are unable to reach a unanimous decision may act by majority decision.

2. Vacancy. If a vacancy occurs in a cotrusteeship, the remaining cotrustees may act for the trust.

3. Participation by cotrustee. A cotrustee must participate in the performance of a trustee's function unless the cotrustee is unavailable to perform the function because of absence, illness, disqualification or other temporary incapacity or the cotrustee has properly delegated the performance of the function to another trustee.

4. Cotrustee unavailable. If a cotrustee is unavailable to perform duties because of absence, illness, disqualification or other temporary incapacity, the

remaining cotrustee or a majority of the remaining cotrustees may act for the trust.

5. Delegation. A trustee may not delegate to a cotrustee the performance of a function the settlor reasonably expected the trustees to perform jointly. Unless a delegation was irrevocable, a trustee may revoke a delegation previously made.

6. Liability. Except as otherwise provided in subsection 7, a trustee who does not join in an action of another trustee is not liable for the action.

7. Reasonable care. Each trustee shall exercise reasonable care to:

A. Prevent a cotrustee from committing a serious breach of trust; and

B. Compel a cotrustee to redress a serious breach of trust.

8. Dissenting trustee. A dissenting trustee who joins in an action at the direction of the majority of the trustees and who notified in writing any cotrustee of the dissent at or before the time of the action is not liable for the action unless the action is a serious breach of trust.

§704. Vacancy in trusteeship; appointment of successor

1. Vacancy. A vacancy in a trusteeship occurs if:

A. A person designated as trustee rejects the trusteeship;

B. A person designated as trustee can not be identified or does not exist;

C. A trustee resigns;

D. A trustee is disqualified or removed;

E. A trustee dies; or

F. A guardian or conservator is appointed for an individual serving as trustee.

2. Filling of vacancies. If one or more cotrustees remain in office, a vacancy in a trusteeship need not be filled. A vacancy in a trusteeship must be filled if the trust has no remaining trustee.

3. Order of priority; noncharitable trust. A vacancy in a trusteeship of a noncharitable trust that is required to be filled must be filled in the following order of priority:

A. By a person designated in the terms of the trust to act as successor trustee;

B. By a person appointed by unanimous agreement of the qualified beneficiaries; or

C. By a person appointed by the court.

4. Order of priority; charitable trust. A vacancy in a trusteeship of a charitable trust that is required to be filled must be filled in the following order of priority:

A. By a person designated in the terms of the trust to act as successor trustee;

B. By a person appointed by unanimous agreement of the charitable organizations expressly designated to receive distributions under the terms of the trust if the Attorney General concurs in the appointment; or

C. By a person appointed by the court.

5. Appointment by court. Whether or not a vacancy in a trusteeship exists or is required to be filled, the court may appoint an additional trustee or special fiduciary whenever the court considers the appointment necessary for the administration of the trust.

§705. Resignation of trustee

1. Resignation. A trustee may resign:

A. Upon at least 30 days' notice to the qualified beneficiaries, the settlor, if living, and all cotrustees; or

B. With the approval of the court.

2. Approval by court. In approving a resignation, the court may issue orders and impose conditions reasonably necessary for the protection of the trust property.

3. Liability. Any liability of a resigning trustee or of any sureties on the trustee's bond for acts or omissions of the trustee is not discharged or affected by the trustee's resignation.

§706. Removal of trustee

1. Request to remove trustee. The settlor, a cotrustee or a beneficiary may request the court to remove a trustee, or a trustee may be removed by the court on its own initiative.

2. Removal by court. The court may remove a trustee if:

A. The trustee has committed a serious breach of trust;

B. Lack of cooperation among cotrustees substantially impairs the administration of the trust;

C. Because of unfitness, unwillingness or persistent failure of the trustee to administer the trust effectively, the court determines that removal of the trustee best serves the interests of the beneficiaries; or

D. There has been a substantial change of circumstances or removal is requested by all of the qualified beneficiaries, the court finds that removal of the trustee best serves the interests of all of the beneficiaries and is not inconsistent with a material purpose of the trust, and a suitable cotrustee or successor trustee is available.

3. Appropriate relief. Pending a final decision on a request to remove a trustee, or in lieu of or in addition to removing a trustee, the court may order such appropriate relief under section 1001, subsection 2 as may be necessary to protect the trust property or the interests of the beneficiaries.

§707. Delivery of property by former trustee

1. Duties of former trustee. Unless a cotrustee remains in office or the court otherwise orders, and until the trust property is delivered to the cotrustee, successor trustee or other person entitled to it, a trustee who has resigned or been removed or disqualified has the duties of a trustee and the powers necessary to protect the trust property.

2. Expeditious delivery. A trustee who has resigned or been removed or disqualified shall proceed expeditiously to deliver the trust property within the trustee's possession to the cotrustee, successor trustee or other person entitled to it.

§708. Compensation of trustee

1. Reasonable. If the terms of a trust do not specify the trustee's compensation, a trustee is entitled to compensation that is reasonable under the circumstances. A percentage fee is allowable under this section only if the fee is reasonable. Among the factors a court may consider as guides in determining the reasonableness of fees under this section are the following:

A. The time and labor required, the novelty and difficulty of the questions involved and the skill requisite to perform the service properly;

B. The likelihood, if apparent to the trustee, that the acceptance of the particular employment will preclude the person employed from other employment;

C. The fee customarily charged in the locality for similar services;

D. The amounts involved and the results obtained;

E. The time limitations imposed by the trustee or by the circumstances; and

F. The experience, reputation and ability of the person performing the services.

The order of the factors in this subsection does not imply their relative importance.

2. Terms of trust. If the terms of a trust specify the trustee's compensation, the trustee is entitled to be compensated as specified, but the court may allow more or less compensation if:

A. The duties of the trustees are substantially different from those contemplated when the trust was created; or

B. The compensation specified by the terms of the trust would be unreasonably low or high.

3. Review; refunds if excessive. On petition of a qualified beneficiary, after notice to all qualified beneficiaries, the court may review the reasonableness of the compensation determined by the trustee for the trustee's services. A trustee who has received excessive compensation from a trust may be ordered to make appropriate refunds.

§709. Reimbursement of expenses

1. Reimbursement. A trustee is entitled to be reimbursed out of the trust property, with interest as appropriate, for:

A. Expenses that were properly incurred in the administration of the trust; and

B. To the extent necessary to prevent unjust enrichment of the trust, expenses that were not properly incurred in the administration of the trust.

2. Advance by trustee. An advance by the trustee of money for the protection of the trust gives rise to a lien against trust property to secure reimbursement with reasonable interest.

CHAPTER 8

DUTIES AND POWERS OF TRUSTEE

§801. Duty to administer trust

Upon acceptance of a trusteeship, the trustee shall administer the trust in good faith, in accordance with its terms and purposes and the interests of the beneficiaries and in accordance with this Code.

§802. Duty of loyalty

1. Interests of beneficiaries. A trustee shall administer the trust solely in the interests of the beneficiaries.

2. Voidable transaction; exceptions. Subject to the rights of persons dealing with or assisting the trustee as provided in section 1012, a sale, encumbrance or other transaction involving the investment or management of trust property entered into by the trustee for the trustee's own personal account or that is otherwise affected by a conflict between the trustee's fiduciary and personal interests is voidable by a beneficiary affected by the transaction unless:

A. The transaction was authorized by the terms of the trust;

B. The transaction was approved by the court;

C. The beneficiary did not commence a judicial proceeding within the time allowed by section 1005;

D. The beneficiary consented to the trustee's conduct, ratified the transaction, or released the trustee in compliance with section 1009; or

E. The transaction involves a contract entered into or claim acquired by the trustee before the person became or contemplated becoming trustee.

3. Transaction presumed affected by conflict. A sale, encumbrance or other transaction involving the investment or management of trust property is presumed to be affected by a conflict between personal and fiduciary interests if it is entered into by the trustee with:

A. The trustee's spouse;

B. The trustee's descendants, siblings or parents, or their spouses;

C. An agent or attorney of the trustee; or

D. A corporation or other person or enterprise in which the trustee, or a person that owns a significant interest in the trustee, has an interest that might affect the trustee's best judgment.

4. Transaction between trustee and beneficiary. A transaction between a trustee and a beneficiary that does not concern trust property but that occurs during the existence of the trust or while the trustee retains significant influence over the beneficiary and from which the trustee obtains an advantage beyond the normal commercial advantage for such a transaction is voidable by the beneficiary unless the trustee

establishes that the transaction was fair to the beneficiary.

5. Opportunity belonging to trust. A transaction not concerning trust property in which the trustee engages in the trustee's individual capacity involves a conflict between personal and fiduciary interests if the transaction concerns an opportunity properly belonging to the trust.

6. Investment. An investment by a trustee in securities of an investment company or investment trust to which the trustee, or its affiliate, provides services in a capacity other than as trustee is not presumed to be affected by a conflict between personal and fiduciary interests if the investment complies with the prudent investor rule of chapter 9. In addition to its compensation for acting as trustee, the trustee may be compensated by the investment company or investment trust for providing those services out of fees charged to the trust. If the trustee receives compensation from the investment company or investment trust for providing investment advisory or investment management services, the trustee at least annually shall notify the persons entitled under section 813 to receive a copy of the trustee's annual report of the rate and method by which that compensation was determined.

7. Act in best interests of beneficiaries. In voting shares of stock or in exercising powers of control over similar interests in other forms of enterprise, the trustee shall act in the best interests of the beneficiaries. If the trust is the sole owner of a corporation or other form of enterprise, the trustee shall elect or appoint directors or other managers who will manage the corporation or enterprise in the best interests of the beneficiaries.

8. Transactions not precluded. This section does not preclude the following transactions, if fair to the beneficiaries:

A. An agreement between a trustee and a beneficiary relating to the appointment or compensation of the trustee;

B. Payment of reasonable compensation to the trustee;

C. A transaction between a trust and another trust or a decedent's estate, a conservatorship or a guardianship of which the trustee is a fiduciary or in which a beneficiary has an interest;

D. A deposit of trust money in a regulated financial service institution operated by the trustee; or

E. An advance by the trustee of money for the protection of the trust.

9. Appointment of special fiduciary. The court may appoint a special fiduciary to make a decision with respect to any proposed transaction that might violate this section if entered into by the trustee.

§803. Impartiality

If a trust has 2 or more beneficiaries, the trustee shall act impartially in investing, managing and distributing the trust property, giving due regard to the beneficiaries' respective interests.

§804. Prudent administration

A trustee shall administer the trust as a prudent person would, by considering the purposes, terms, distributional requirements and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill and caution.

§805. Costs of administration

In administering a trust, the trustee may incur only costs that are reasonable in relation to the trust property, the purposes of the trust and the skills of the trustee.

§806. Trustee's skills

A trustee who has special skills or expertise, or is named trustee in reliance upon the trustee's representation that the trustee has special skills or expertise, shall use those special skills or expertise.

§807. Delegation by trustee

1. Delegation. A trustee may delegate duties and powers that a prudent trustee of comparable skills could properly delegate under the circumstances. The trustee shall exercise reasonable care, skill and caution in:

A. Selecting an agent;

B. Establishing the scope and terms of the delegation, consistent with the purposes and terms of the trust; and

C. Periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the terms of the delegation.

2. Agent's duty to trust. In performing a delegated function, an agent owes a duty to the trust to exercise reasonable care to comply with the terms of the delegation.

3. Liability of trustee. A trustee who complies with subsection 1 is not liable to the beneficiaries or to the trust for an action of the agent to whom the function was delegated.

4. Agent submits to jurisdiction. By accepting a delegation of powers or duties from the trustee of a trust that is subject to the law of this State, an agent submits to the jurisdiction of the courts of this State.

5. Review of agent. Upon petition of a qualified beneficiary, after notice to all qualified beneficiaries, the trustee and the agent of the trustee, the court may review the employment of any agent by the trustee and the reasonableness of the agent's compensation. Any agent who is found to have received excess compensation from a trust may be ordered to make appropriate refunds.

§808. Powers to direct

1. Revocable trust; direction of settlor. While a trust is revocable, the trustee may follow a direction of the settlor that is contrary to the terms of the trust.

2. Directions of person conferred power to direct trustee. If the terms of a trust confer upon a person other than the settlor of a revocable trust power to direct certain actions of the trustee, the trustee shall act in accordance with an exercise of the power unless the attempted exercise is manifestly contrary to the terms of the trust or the trustee knows the attempted exercise would constitute a serious breach of a fiduciary duty that the person holding the power owes to the beneficiaries of the trust.

3. Modification or termination. The terms of a trust may confer upon a trustee or other person a power to direct the modification or termination of the trust.

4. Power to direct; fiduciary duty. A person, other than a beneficiary, who holds a power to direct is presumptively a fiduciary who, as such, is required to act in good faith with regard to the purposes of the trust and the interests of the beneficiaries. The holder of a power to direct is liable for any loss that results from breach of a fiduciary duty.

§809. Control and protection of trust property

A trustee shall take reasonable steps to take control of and protect the trust property.

§810. Record keeping and identification of trust property

1. Adequate records of administration. A trustee shall keep adequate records of the administration of the trust.

2. Separation of property. A trustee shall keep trust property separate from the trustee's own property.

3. Interest of trust, records. Except as otherwise provided in subsection 4, a trustee not subject to federal or state banking regulation shall cause the trust

property to be designated so that the interest of the trust, to the extent feasible, appears in records maintained by a party other than a trustee or beneficiary to whom the trustee has delivered the property.

4. Two or more trusts. If the trustee maintains records clearly indicating the respective interests, a trustee may invest as a whole the property of 2 or more separate trusts.

§811. Enforcement and defense of claims

A trustee shall take reasonable steps to enforce claims of the trust and to defend claims against the trust.

§812. Collecting trust property

A trustee shall take reasonable steps:

1. Compel delivery. To compel a former trustee or other person to deliver trust property to the trustee; and

2. Redress breach. To redress a breach of trust known to the trustee to have been committed by a former trustee.

§813. Duty to inform and report

1. Inform beneficiaries. A trustee shall keep the qualified beneficiaries of the trust reasonably informed about the administration of the trust and of the material facts necessary for them to protect their interests. Unless a request is unreasonable under the circumstances, a trustee shall promptly respond to a qualified beneficiary's request for that trustee's reports and other information reasonably related to the administration of the trust.

2. Information. A trustee:

A. Upon request of a beneficiary, shall promptly furnish to the beneficiary a copy of the trust instrument;

B. Within 60 days after accepting a trusteeship, shall notify the qualified beneficiaries of the acceptance and of the trustee's name, address and telephone number;

C. Within 60 days after the date the trustee acquires knowledge of the creation of an irrevocable trust, or the date the trustee acquires knowledge that a formerly revocable trust has become irrevocable, whether by the death of the settlor or otherwise, shall notify the qualified beneficiaries of the trust's existence, of the identity of the settlor or settlors, of the right to request a copy of the trust instrument and of the right to a trustee's report as provided in subsection 3; and

D. Shall notify the qualified beneficiaries in advance of any change in the method or rate of the trustee's compensation.

3. Report. A trustee shall send to the distributees or permissible distributees of trust income or principal, and to other qualified beneficiaries who request it, at least annually and at the termination of the trust, a report of the trust property, liabilities, receipts and disbursements, including the source and amount of the trustee's compensation, a listing of the trust assets and, if feasible, their respective market values and tax bases. Upon a vacancy in a trusteeship, unless a cotrustee remains in office, a report must be sent to the qualified beneficiaries by the former trustee. A personal representative of a deceased trustee or a conservator of the estate or, if no conservator has been appointed, a guardian of an incapacitated trustee may send qualified beneficiaries a report on behalf of a deceased or incapacitated trustee.

4. Waiver. A beneficiary may waive the right to a trustee's report or other information otherwise required to be furnished under this section. A beneficiary, with respect to future reports and other information, may withdraw a waiver previously given.

§814. Discretionary powers; tax savings

1. Discretionary power; interests of beneficiaries. Notwithstanding the breadth of discretion granted to a trustee in the terms of the trust, including the use of such terms as "absolute," "sole" or "uncontrolled," the trustee shall exercise a discretionary power in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries. A trustee's power to make distributions is discretionary notwithstanding terms of the trust providing that the trustee "shall" make distributions exercising a discretionary power, with or without standards.

2. Discretionary distributions. Subject to subsection 4, and unless the terms of the trust expressly indicate that a rule in this subsection does not apply:

A. A person other than a settlor who is a beneficiary and trustee of a trust that confers on the trustee a power to make discretionary distributions to or for the trustee's personal benefit may exercise the power only in accordance with an ascertainable standard relating to the trustee's individual health, education, support or maintenance within the meaning of the federal Internal Revenue Code of 1986, Section 2041(b)(1)(A) or 2514(c)(1), as in effect on July 1, 2005, or as later amended; and

B. A trustee may not exercise a power to make discretionary distributions to satisfy a legal obli-

gation of support that the trustee personally owes another person.

3. Cotrustees; special fiduciary. A power whose exercise is limited or prohibited by subsection 2 may be exercised by a majority of the remaining trustees whose exercise of the power is not so limited or prohibited. If the power of all trustees is so limited or prohibited, the court may appoint a special fiduciary with authority to exercise the power.

4. Exceptions. Subsection 2 does not apply to:

A. A power held by the settlor's spouse who is the trustee of a trust for which a marital deduction, as defined in the federal Internal Revenue Code of 1986, Section 2056(b)(5) or 2523(e), as in effect on July 1, 2005, or as later amended, was previously allowed;

B. Any trust during any period that the trust may be revoked or amended by its settlor; or

C. A trust if contributions to the trust qualify for the annual exclusion under the federal Internal Revenue Code of 1986, Section 2503(c) as in effect on July 1, 2005, or as later amended.

§815. General powers of trustee

1. General powers. A trustee, without authorization by the court, may exercise:

A. Powers conferred by the terms of the trust; and

B. Except as limited by the terms of the trust:

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

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

(3) Any other powers conferred by this Code.

2. Subject to fiduciary duties. The exercise of a power is subject to the fiduciary duties prescribed by this chapter.

§816. Specific powers of trustee

Without limiting the authority conferred by section 815, a trustee may:

1. Collect trust property. Collect trust property and accept or reject additions to the trust property from a settlor or any other person;

2. Acquire or sell property. Acquire or sell property, for cash or on credit, at public or private sale;

3. Change character of trust property. Exchange, partition or otherwise change the character of trust property;

4. Deposit trust money. Deposit trust money in an account in a regulated financial service institution;

5. Borrow money; pledge trust property. Borrow money, with or without security, and mortgage or pledge trust property for a period within or extending beyond the duration of the trust;

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

7. Exercise rights of owner. With respect to stocks or other securities, exercise the rights of an absolute owner, including the right to:

A. Vote, or give proxies to vote, with or without power of substitution, or enter into or continue a voting trust agreement;

B. Hold a security in the name of a nominee or in other form without disclosure of the trust so that title may pass by delivery;

C. Pay calls, assessments and other sums chargeable or accruing against the securities, and sell or exercise stock subscription or conversion rights; and

D. Deposit the securities with a depository or other regulated financial service institution;

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

9. Enter into lease. Enter into a lease for any purpose as lessor or lessee, including a lease or other arrangement for exploration and removal of natural resources, with or without the option to purchase or renew, for a period within or extending beyond the duration of the trust;

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

11. Insure. Insure the property of the trust against damage or loss and insure the trustee, the trustee's agents and beneficiaries against liability arising from the administration of the trust;

12. Abandon or decline administration. Abandon or decline to administer property of no value or of insufficient value to justify its collection or continued administration;

13. Liability for violation of environmental law. With respect to possible liability for violation of environmental law:

A. Inspect or investigate property the trustee holds or has been asked to hold, or property owned or operated by an organization in which the trustee holds or has been asked to hold an interest, for the purpose of determining the application of environmental law with respect to the property;

B. Take action to prevent, abate or otherwise remedy any actual or potential violation of any environmental law affecting property held directly or indirectly by the trustee, whether taken before or after the assertion of a claim or the initiation of governmental enforcement;

C. Decline to accept property into trust or disclaim any power with respect to property that is or may be burdened with liability for violation of environmental law;

D. Compromise claims against the trust that may be asserted for an alleged violation of environmental law; and

E. Pay the expense of any inspection, review, abatement or remedial action to comply with environmental law;

14. Claims against trust. Pay or contest any claim, settle a claim by or against the trust and release, in whole or in part, a claim belonging to the trust;

15. Pay expenses of administration. Pay taxes, assessments, compensation of the trustee and of employees and agents of the trust and other expenses incurred in the administration of the trust;

16. Taxes. Exercise elections with respect to federal, state and local taxes;

17. Trustee compensation and benefits. Select a mode of payment under any employee benefit or retirement plan, annuity or life insurance payable to the trustee; exercise rights under those instruments, including exercise of the right to indemnification for expenses and against liabilities; and take appropriate action to collect the proceeds;

18. Loans. Make loans out of trust property, including loans to a beneficiary on terms and conditions the trustee considers to be fair and reasonable under the circumstances; the trustee has a lien on future distributions for repayment of those loans;

19. Guarantee loans. Pledge trust property to guarantee loans made by others to the beneficiary;

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

21. Beneficiary under legal disability or incapacitated. Pay an amount distributable to a beneficiary who is under a legal disability or who the trustee reasonably believes is incapacitated, by paying it directly to the beneficiary or applying it for the beneficiary's benefit, or by:

A. Paying it to the beneficiary's conservator or, if the beneficiary does not have a conservator, the beneficiary's guardian;

B. Paying it to the beneficiary's custodian under Title 33, chapter 32, which is the Maine Uniform Transfers to Minors Act, or to a custodial trustee under the laws of another state, and, for that purpose, creating a custodianship or custodial trust;

C. If the trustee does not know of a conservator, guardian, custodian or custodial trustee, paying it to an adult relative or other person having legal or physical care or custody of the beneficiary, to be expended on the beneficiary's behalf; or

D. Managing it as a separate fund on the beneficiary's behalf, subject to the beneficiary's continuing right to withdraw the distribution;

22. Distribution, division or termination. On distribution of trust property or the division or termination of a trust, make distributions in divided or undivided interests, allocate particular assets in proportionate or disproportionate shares, value the trust property for those purposes and adjust for resulting differences in valuation;

23. Resolution of dispute. Resolve a dispute concerning the interpretation of the trust or its administration by mediation, arbitration or other procedure for alternative dispute resolution;

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

25. Contracts and other instruments. Sign and deliver contracts and other instruments that are useful to achieve or facilitate the exercise of the trustee's powers; and

26. Wind up administration and distribute. On termination of the trust, exercise the powers appropriate to wind up the administration of the trust and distribute the trust property to the persons entitled to it.

§817. Distribution upon termination

1. Proposed distribution. Upon termination or partial termination of a trust, the trustee may send to the beneficiaries a proposal for distribution. The right of any beneficiary to object to the proposed distribution terminates if the beneficiary does not notify the trustee of an objection within 30 days after the proposal was sent but only if the proposal informed the beneficiary of the right to object and of the time allowed for objection.

2. Distribution; reasonable reserve. Upon the occurrence of an event terminating or partially terminating a trust, the trustee shall proceed expeditiously to distribute the trust property to the persons entitled to it, subject to the right of the trustee to retain a reasonable reserve for the payment of debts, expenses and taxes.

3. Release from liability invalid. A release by a beneficiary of a trustee from liability for breach of trust is invalid to the extent:

A. It was induced by improper conduct of the trustee; or

B. The beneficiary, at the time of the release, did not know of the beneficiary's rights or of the material facts relating to the breach.

CHAPTER 9

MAINE UNIFORM PRUDENT INVESTOR ACT

§901. Prudent investor rule

1. Duty to comply. Except as otherwise provided in section 902, a trustee who invests and manages trust assets owes a duty to the beneficiaries

of the trust to comply with the prudent investor rule set forth in this chapter.

2. Altered by provisions of trust. The prudent investor rule may be expanded, restricted, eliminated or otherwise altered by the provisions of a trust. A trustee is not liable to a beneficiary to the extent that the trustee acted in reasonable reliance on the provisions of the trust.

§902. Standard of care; portfolio strategy; risk and return objectives

1. Consideration of purposes, terms, distribution requirements and other circumstances. A trustee shall invest and manage trust assets, as a prudent investor would, by considering the purposes, terms, distribution requirements and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill and caution.

2. Overall investment strategy. A trustee's investment and management decisions respecting individual assets must be evaluated not in isolation but in the context of the trust portfolio as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the trust.

3. Relevant circumstances to consider. Among circumstances that a trustee shall consider in investing and managing trust assets are all of the following that are relevant to the trust or its beneficiaries:

- A. General economic conditions;
- B. The possible effect of inflation or deflation;
- C. The expected tax consequences of investment decisions or strategies;
- D. The role that each investment or course of action plays within the overall trust portfolio, which may include financial assets, interests in closely held enterprises, tangible and intangible personal property and real property;
- E. The expected total return from income and the appreciation of capital;
- F. Other resources of the beneficiaries, to the extent the other resources are known to the trustee;
- G. Needs for liquidity, regularity of income and preservation or appreciation of capital; and
- H. An asset's special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries.

4. Reasonable effort to verify facts. A trustee shall make a reasonable effort to verify facts relevant to the investment and management of trust assets.

5. Kind of property; type of investment. A trustee may invest in any kind of property or type of investment consistent with the standards of this chapter.

§903. Diversification

A trustee shall diversify the investments of the trust unless the trustee reasonably determines that, because of special circumstances, the purposes of the trust are better served without diversifying.

§904. Duties at inception of trusteeship

Within a reasonable time after accepting a trusteeship or receiving trust assets, a trustee shall review the trust assets and make and implement decisions concerning the retention and disposition of assets in order to bring the trust portfolio into compliance with the purposes, terms, distribution requirements and other circumstances of the trust and with the requirements of this chapter.

§905. Investment costs

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

§906. Language invoking standard of chapter

The following terms or comparable language in the provisions of a trust, unless otherwise limited or modified, authorizes any investment or strategy permitted under this chapter: "investments permissible by law for investment of trust funds"; "legal investments"; "authorized investments"; "using the judgment and care under the circumstances then prevailing that persons of prudence, discretion and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital"; "prudent man rule"; "prudent trustee rule"; "prudent person rule"; or "prudent investor rule."

§907. Uniformity of application and construction

This chapter must be applied and construed to effectuate its general purposes to make uniform the law with respect to the subject of the Uniform Prudent Investor Act among the states enacting it.

§908. Short title

This chapter may be known and cited as the "Maine Uniform Prudent Investor Act."

CHAPTER 10**LIABILITY OF TRUSTEES AND RIGHTS OF PERSONS DEALING WITH TRUSTEE****§1001. Remedies for breach of trust**

1. Violation of duty. A violation by a trustee of a duty the trustee owes to a beneficiary is a breach of trust.

2. Remedies. To remedy a breach of trust that has occurred or may occur, the court may:

A. Compel the trustee to perform the trustee's duties;

B. Enjoin the trustee from committing a breach of trust;

C. Compel the trustee to redress a breach of trust by paying money, restoring property or other means;

D. Order a trustee to account;

E. Appoint a special fiduciary to take possession of the trust property and administer the trust;

F. Suspend the trustee;

G. Remove the trustee as provided in section 706;

H. Reduce or deny compensation to the trustee;

I. Subject to section 1012, void an act of the trustee, impose a lien or a constructive trust on trust property or trace trust property wrongfully disposed of and recover the property or its proceeds; or

J. Order any other appropriate relief.

§1002. Damages for breach of trust

1. Damages. A trustee who commits a breach of trust is liable to the beneficiaries affected for the greater of:

A. The amount required to restore the value of the trust property and trust distributions to what they would have been had the breach not occurred; and

B. The profit the trustee made by reason of the breach.

2. Contribution from other trustees. Except as otherwise provided in this subsection, if more than one trustee is liable to the beneficiaries for a breach of trust, a trustee is entitled to contribution from the other trustee or trustees. A trustee is not entitled to

contribution if the trustee was substantially more at fault than another trustee or if the trustee committed the breach of trust in bad faith or with reckless indifference to the purposes of the trust or the interests of the beneficiaries. A trustee who received a benefit from the breach of trust is not entitled to contribution from another trustee to the extent of the benefit received.

§1003. Damages in absence of breach

1. Accountable for profit. A trustee is accountable to an affected beneficiary for any profit made by the trustee arising from the administration of the trust, even absent a breach of trust. Nothing in this section limits a trustee's right to reasonable compensation under section 708.

2. Not accountable for loss, depreciation or no profit. Absent a breach of trust, a trustee is not liable to a beneficiary for a loss or depreciation in the value of trust property or for not having made a profit.

§1004. Attorney's fees and costs

In a judicial proceeding involving the administration of a trust, the court, as justice and equity may require, may award costs and expenses, including reasonable attorney's fees, to any party, to be paid by another party or from the trust that is the subject of the controversy.

§1005. Limitation of action against trustee

1. Report; one-year limitation. A beneficiary may not commence a proceeding against a trustee for breach of trust more than one year after the date the beneficiary or a representative of the beneficiary was sent a report that adequately disclosed the existence of a potential claim for breach of trust and informed the beneficiary of the time allowed for commencing a proceeding.

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

3. Six years. If subsection 1 does not apply, a judicial proceeding by a beneficiary against a trustee for breach of trust must be commenced within 6 years after the first to occur of:

A. The removal, resignation or death of the trustee;

B. The termination of the beneficiary's interest in the trust; and

C. The termination of the trust.

§1006. Reliance on trust instrument

A trustee who acts in reasonable reliance on the terms of the trust as expressed in the trust instrument is not liable to a beneficiary for a breach of trust to the extent the breach resulted from the reliance.

§1007. Event affecting administration or distribution

If the happening of an event, including marriage, divorce, performance of educational requirements or death, affects the administration or distribution of a trust, a trustee who has exercised reasonable care to ascertain the happening of the event is not liable for a loss resulting from the trustee's lack of knowledge.

§1008. Exculpation of trustee

1. Exculpation unenforceable. A term of a trust relieving a trustee of liability for breach of trust is unenforceable to the extent that it:

A. Relieves the trustee of liability for breach of trust committed in bad faith or with reckless indifference to the purposes of the trust or the interests of the beneficiaries; or

B. Was inserted as the result of an abuse by the trustee of a fiduciary or confidential relationship to the settlor.

2. Invalid; proof otherwise. An exculpatory term drafted or caused to be drafted by the trustee is invalid as an abuse of a fiduciary or confidential relationship unless the trustee proves that the exculpatory term is fair under the circumstances and that its existence and contents were adequately communicated to the settlor.

§1009. Beneficiary's consent, release or ratification

A trustee is not liable to a beneficiary for breach of trust if the beneficiary consented to the conduct constituting the breach, released the trustee from liability for the breach or ratified the transaction constituting the breach, unless:

1. Induced by improper conduct. The consent, release or ratification of the beneficiary was induced by improper conduct of the trustee; or

2. Beneficiary did not know rights. At the time of the consent, release or ratification, the beneficiary did not know of the beneficiary's rights or of the material facts relating to the breach.

§1010. Limitation on personal liability of trustee

1. Not personally liable on contract; exception. Except as otherwise provided in the contract, a trustee is not personally liable on a contract properly

entered into in the trustee's fiduciary capacity in the course of administering the trust if the trustee in the contract disclosed the fiduciary capacity.

2. Personally liable for torts. A trustee is personally liable for torts committed in the course of administering a trust, or for obligations arising from ownership or control of trust property, including liability for violation of environmental law, only if the trustee is personally at fault.

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

§1011. Interest as general partner

1. Not personally liable on contract. Except as otherwise provided in subsection 3 or unless personal liability is imposed in the contract, a trustee who holds an interest as a general partner in a general or limited partnership is not personally liable on a contract entered into by the partnership after the trust's acquisition of the interest if the fiduciary capacity was disclosed in the contract or in a statement previously filed pursuant to the Uniform Partnership Act or the Maine Revised Uniform Limited Partnership Act.

2. Not personally liable for torts. Except as otherwise provided in subsection 3, a trustee who holds an interest as a general partner is not personally liable for torts committed by the partnership or for obligations arising from ownership or control of the interest unless the trustee is personally at fault.

3. Exceptions to immunity. The immunity provided by this section does not apply if an interest in the partnership is held by the trustee in a capacity other than that of trustee or is held by the trustee's spouse or one or more of the trustee's descendants, siblings or parents or the spouse of any of the trustee's descendants, siblings or parents.

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

§1012. Protection of person dealing with trustee

1. Exceeding or improperly exercising powers. A person other than a beneficiary who in good faith assists a trustee, or who in good faith and for value deals with a trustee, without knowledge that the trustee is exceeding or improperly exercising the

trustee's powers is protected from liability as if the trustee properly exercised those powers.

2. No duty to inquire. A person other than a beneficiary who in good faith deals with a trustee is not required to inquire into the extent of the trustee's powers or the propriety of their exercise.

3. In good faith delivery of assets. A person who in good faith delivers assets to a trustee need not ensure their proper application.

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

5. Other protections prevail. Provisions of other laws relating to commercial transactions or transfer of securities by fiduciaries that are more protective prevail over the protection provided by this section.

§1013. Certification of trust

1. Information. Instead of furnishing a copy of the trust instrument to a person other than a beneficiary, the trustee may furnish to the person a certification of trust containing some or all of the following information:

- A. That the trust exists and the date the trust instrument was executed;
- B. The identity of the settlor;
- C. The identity and address of the currently acting trustee;
- D. The powers of the trustee;
- E. The revocability or irrevocability of the trust and the identity of any person holding a power to revoke the trust;
- F. The authority of cotrustees to sign or otherwise authenticate and whether all or fewer than all are required in order to exercise powers of the trustee;
- G. The trust's taxpayer identification number; and
- H. The manner of taking title to trust property.

2. Authentication. A certification of trust may be signed or otherwise authenticated by any trustee.

3. Representations correct. A certification of trust must state that the trust has not been revoked,

modified or amended in any manner that would cause the representations contained in the certification of trust to be incorrect.

4. Dispositive terms. A certification of trust need not contain the dispositive terms of a trust.

5. Excerpts from trust instrument. A recipient of a certification of trust may require the trustee to furnish copies of those excerpts from the original trust instrument and later amendments that designate the trustee and confer upon the trustee the power to act in the pending transaction.

6. Not liable for reliance on incorrect representations; knowledge. A person who acts in reliance upon a certification of trust without knowledge that the representations contained therein are incorrect is not liable to any person for so acting and may assume without inquiry the existence of the facts contained in the certification. Knowledge of the terms of the trust may not be inferred solely from the fact that a copy of all or part of the trust instrument is held by the person relying upon the certification.

7. Enforce transactions. A person who in good faith enters into a transaction in reliance upon a certification of trust may enforce the transaction against the trust property as if the representations contained in the certification were correct.

8. Demand not in good faith; damages. A person making a demand for the trust instrument in addition to a certification of trust or excerpts is liable for damages if the court determines that the person did not act in good faith in demanding the trust instrument.

9. Copy in judicial proceeding. This section does not limit the right of a person to obtain a copy of the trust instrument in a judicial proceeding concerning the trust.

CHAPTER 11

MISCELLANEOUS PROVISIONS

§1101. Uniformity of application and construction

In applying and construing this Code, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

§1102. Electronic records and signatures

The provisions of this Code governing the legal effect, validity or enforceability of electronic records or electronic signatures, and of contracts formed or performed with the use of such records or signatures, conform to the requirements of Section 102 of the

federal Electronic Signatures in Global and National Commerce Act, 15 United States Code, Section 7002, and supersede, modify and limit the requirements of the federal Electronic Signatures in Global and National Commerce Act.

§1103. Effective date

This Code takes effect on July 1, 2005.

§1104. Application to existing relationships

1. Application. Except as otherwise provided in this Code, on July 1, 2005:

A. This Code applies to all trusts created before, on or after July 1, 2005;

B. This Code applies to all judicial proceedings concerning trusts commenced on or after July 1, 2005;

C. This Code applies to judicial proceedings concerning trusts commenced before July 1, 2005 unless the court finds that application of a particular provision of this Code would substantially interfere with the effective conduct of the judicial proceedings or prejudice the rights of the parties, in which case the particular provision of this Code does not apply and the superseded law applies;

D. Any rule of construction or presumption provided in this Code applies to trust instruments executed before July 1, 2005 unless there is a clear indication of a contrary intent in the terms of the trust; and

E. An act done before July 1, 2005 is not affected by this Code.

2. Continued application of statute. If a right is acquired, extinguished or barred upon the expiration of a prescribed period that has commenced to run under any other statute before July 1, 2005, that statute continues to apply to the right even if it has been repealed or superseded.

Sec. A-2. Effective date. This Part takes effect July 1, 2005.

PART B

Sec. B-1. 5 MRSA §17108, sub-§2, ¶A, as enacted by PL 1985, c. 801, §§5 and 7, is amended to read:

A. The fiduciary or registered investment advisor shall invest and reinvest the funds of the retirement system in accordance with the standards defined in Title 18-A, ~~section 7-302~~ 18-B, sections 802 to 807 and chapter 9. The investment

and reinvestment shall be are subject to periodic review by the board.

Sec. B-2. 5 MRSA §17153, sub-§3, as enacted by PL 1985, c. 801, §§5 and 7, is amended to read:

3. Investment of funds. The board may cause the funds created by this Part to be invested and reinvested in accordance with the standards defined in Title ~~18-A, section 7-302~~ 18-B, sections 802 to 807 and chapter 9, subject to periodic approval of the investment program by the board.

Sec. B-3. 13 MRSA §4106, last ¶, as enacted by PL 2001, c. 550, Pt. C, §5 and affected by §29, is amended to read:

In the administration of the powers to appropriate appreciation, to make and retain investments and to delegate investment management of institutional funds, trustees of charitable trusts are governed by the standards set forth in Title ~~18-A, section 7-302~~ 18-B, sections 802 to 807 and chapter 9.

Sec. B-4. 18-A MRSA §1-302, sub-§(a), as enacted by PL 1979, c. 540, §1, is amended to read:

(a) To the full extent provided in sections 3-105, 5-102; and 5-402, ~~7-201 and 7-204,~~ the court has jurisdiction over all subject matter relating to (1) estates of decedents, including construction of wills and determination of heirs and successors of decedents and estates of protected persons; (2) protection of minors and incapacitated persons; and (3) trusts.

Sec. B-5. 18-A MRSA §3-913, sub-§(a), as enacted by PL 1979, c. 540, §1, is repealed.

Sec. B-6. 18-A MRSA §3-913, sub-§(c), as enacted by PL 1979, c. 540, §1, is amended to read:

(c) No inference of negligence on the part of the personal representative ~~shall~~ may be drawn from ~~his~~ the personal representative's failure to exercise the authority conferred by ~~subsections (a) and subsection (b).~~

Sec. B-7. 18-A MRSA §5-417, as enacted by PL 1979, c. 540, §1, is amended to read:

§5-417. General duty of conservator

In the exercise of ~~his~~ the conservator's powers, a conservator is to act as a fiduciary and shall observe the standards of care applicable to trustees as described by ~~section 7-302~~ Title 18-B, sections 802 to 807 and chapter 9.

Sec. B-8. 18-A MRSA §5-508, sub-§§(a) and (d), as repealed and replaced by PL 1997, c. 683, Pt. C, §6, are amended to read:

(a) A durable financial power of attorney is a durable power of attorney by which a principal designates another as attorney-in-fact to make decisions on the principal's behalf in matters concerning the principal's finances, property or both. In the exercise of the powers conferred under a durable financial power of attorney, an attorney-in-fact shall act as a fiduciary under the standards of care applicable to trustees as described by ~~section 7-302~~ Title 18-B, sections 802 to 807 and chapter 9.

(d) A durable financial power of attorney must contain the following language:

"Notice to the Principal: As the "Principal," you are using this Durable Power of Attorney to grant power to another person (called the "Agent" or "Attorney-in-fact") to make decisions about your money, property or both and to use your money, property or both on your behalf. If this written Durable Power of Attorney does not limit the powers that you give your Agent, your Agent will have broad and sweeping powers to sell or otherwise dispose of your property and spend your money without advance notice to you or approval by you. Under this document, your Agent will continue to have these powers after you become incapacitated, and you may also choose to authorize your Agent to use these powers before you become incapacitated. The powers that you give your Agent are explained more fully in the Maine Revised Statutes, Title 18-A, sections 5-501 to 5-508 and in Maine case law. You have the right to revoke or take back this Durable Power of Attorney at any time as long as you are of sound mind. If there is anything about this Durable Power of Attorney that you do not understand, you should ask a lawyer to explain it to you.

Notice to the Agent: As the "Agent" or "Attorney-in-fact," you are given power under this Durable Power of Attorney to make decisions about the money, property or both belonging to the Principal and to spend the Principal's money, property or both on that person's behalf in accordance with the terms of this Durable Power of Attorney. This Durable Power of Attorney is valid only if the Principal is of sound mind when the Principal signs it. As the Agent, you are under a duty (called a "fiduciary duty") to observe the standards observed by a prudent person dealing with the property of another. The duty is explained more fully in the Maine Revised Statutes, Title 18-A, sections 5-501 to 5-508 and ~~7-302~~ Title 18-B, sections 802 to 807 and chapter 9 and in Maine case law. As the Agent, you are not entitled to use the money or property for your own benefit or to make gifts to yourself or others unless the Durable Power of Attorney specifically gives you the authority to do so. As the Agent, your authority under this Durable Power of Attorney will end when the Principal dies and you will not have the authority to administer the estate

unless you are authorized to do so in accordance with the ~~Maine~~ Probate Code. If you violate your fiduciary duty under this Durable Power of Attorney, you may be liable for damages and may be subject to criminal prosecution. If there is anything about this Durable Power of Attorney or your duties under it that you do not understand, you should ask a lawyer to explain it to you."

This language does not confer powers not otherwise contained in the durable financial power of attorney.

Sec. B-9. 18-A MRSA §§7-101 to 7-104, as enacted by PL 1979, c. 540, §1, are repealed.

Sec. B-10. 18-A MRSA Art. 7, Pt. 2, as amended, is repealed.

Sec. B-11. 18-A MRSA Art. 7, Pt. 3, as amended, is repealed.

Sec. B-12. 18-A MRSA §7-401, as enacted by PL 1979, c. 540, §1, is repealed.

Sec. B-13. 18-A MRSA §7-402, as amended by PL 2001, c. 544, §1, is repealed.

Sec. B-14. 18-A MRSA §§7-403 to 7-406, as enacted by PL 1979, c. 540, §1, are repealed.

Sec. B-15. 18-A MRSA §8-304, as enacted by PL 1979, c. 540, §1, is amended to read:

§8-304. Approval of bond by judge

Except as otherwise provided by ~~section sections~~ sections 3-603 through to 3-606, 4-204, 4-207, 5-411, 5-412, and 5-432 and 7-304 Title 18-B, section 702, no bond required to be given to the judge of probate or to be filed in the probate office is sufficient until it has been examined by the judge and ~~his~~ the judge's approval has been written thereon.

Sec. B-16. 18-A MRSA §8-313, as enacted by PL 1979, c. 540, §1, is amended to read:

§8-313. Judicial authorization of actions

The judge of probate may expressly authorize or instruct a personal representative or other fiduciary, at the judge's discretion or on the complaint of ~~himself~~ or any interested person, to commence an action on the bond for the benefit of the estate. Nothing herein ~~shall~~ may be deemed to limit the power or duty of a successor fiduciary to bring such proceedings as they are authorized to bring without express court authorization under section 3-606, subsection (a), paragraph (4); section 5-412, subsection (a), paragraph (3); Title 18-B, section 7-304 702; or as otherwise provided by law.

Sec. B-17. 30-A MRSA §5706, sub-§4, as amended by PL 1995, c. 206, §1, is further amended to read:

4. Safekeeping and investment management agreements. The municipal officers may enter into an agreement with any financial institution with trust powers authorized to do business in the State for the safekeeping of the reserve funds, as defined in section 5801, or trust funds, as defined by section 5653, of the municipality. Services must consist of the safekeeping of the funds, collection of interest and dividends, and any other fiscal service that is normally covered in a safekeeping agreement. Investment of reserve funds or trust funds deposited under a safekeeping agreement may be managed either by the financial institution with which the funds are deposited or by an investment advisor registered with the National Association of Securities Dealers, federal Securities and Exchange Commission or other governmental agency or instrumentality with jurisdiction over investment advisors, to act in such capacity pursuant to an investment advisory agreement providing for investment management and periodic review of portfolio investments. Investment of funds on behalf of the municipality under this section are is governed by the rule of prudence, according to Title 18-A, section 7-302 18-B, sections 802 to 807 and chapter 9. The contracting parties shall give assurance of proper safeguards that are usual to these contracts and shall furnish insurance protection satisfactory to both parties.

Sec. B-18. 36 MRSA §5102, sub-§4, ¶¶B and C, as amended by PL 1991, c. 148, §1, are further amended to read:

B. A trust created by will of a decedent who at death was domiciled in this State; or

C. A trust created by, or consisting of property of, a person domiciled in this State; or

Sec. B-19. 36 MRSA §5102, sub-§4, ¶D, as enacted by PL 1991, c. 148, §2, is repealed.

Sec. B-20. Effective date. This Part takes effect July 1, 2005.

PART C

Sec. C-1. 18-A MRSA §5-506, sub-§(d) is enacted to read:

(d) An agent under a durable health care power of attorney has the power and authority to serve as the personal representative of the principal for all purposes of the federal Health Insurance Portability and Accountability Act of 1996, 42 United States Code, Section 1320d et seq. and its regulations, 45 Code of Federal Regulations 160-164. The agent has

all the rights of the principal with respect to the use and disclosure of the individually identifiable health information and other medical records of the principal.

Sec. C-2. 18-A MRSA §5-802, sub-§(j) is enacted to read:

(j) A surrogate or an agent named in an advance health-care directive has the power and authority to serve as the personal representative of the patient who executed the health care directive for all purposes of the federal Health Insurance Portability and Accountability Act of 1996, 42 United States Code, Section 1320d et seq. and its regulations, 45 Code of Federal Regulations 160-164. The surrogate or agent has all the rights of the patient with respect to the use and disclosure of the individually identifiable health information and other medical records of the patient.

Sec. C-3. 18-A MRSA §5-804, Pt. 1, as enacted by PL 1995, c. 378, Pt. A, §1, is amended to read:

PART 1

POWER OF ATTORNEY FOR HEALTH CARE

(1) DESIGNATION OF AGENT: I designate the following individual as my agent to make health-care decisions for me:

.....
(name of individual you choose as agent)

.....
(address) (city) (state) (zip code)

.....
(home phone) (work phone)

OPTIONAL: If I revoke my agent's authority or if my agent is not willing, able or reasonably available to make a health-care decision for me, I designate as my first alternate agent:

.....
(name of individual you choose as first alternate agent)

.....
(address) (city) (state) (zip code)

.....
(home phone) (work phone)

OPTIONAL: If I revoke the authority of my agent and first alternate agent or if neither is willing, able or reasonably available to make a health-care decision for me, I designate as my second alternate agent:

.....
(name of individual you choose as second alternate agent)

.....
(address) (city) (state) (zip code)

.....
(home phone) (work phone)

(2) AGENT'S AUTHORITY: My agent is authorized to make all health-care decisions for me, including decisions to provide, withhold or withdraw artificial nutrition and hydration and all other forms of health care to keep me alive, except as I state here:

.....
.....
.....
(Add additional sheets if needed.)

(3) WHEN AGENT'S AUTHORITY BECOMES EFFECTIVE: My agent's authority becomes effective when my primary physician determines that I am unable to make my own health-care decisions unless I mark the following box. If I mark this box [], my agent's authority to make health-care decisions for me takes effect immediately.

(4) AGENT'S OBLIGATION: My agent shall make health-care decisions for me in accordance with this power of attorney for health care, any instructions I give in Part 2 of this form and my other wishes to the extent known to my agent. To the extent my wishes are unknown, my agent shall make health-care decisions for me in accordance with what my agent determines to be in my best interest. In determining my best interest, my agent shall consider my personal values to the extent known to my agent.

(5) NOMINATION OF GUARDIAN: If a guardian of my person needs to be appointed for me by a court, I nominate the agent designated in this form. If that agent is not willing, able or reasonably available to act as guardian, I nominate the alternate agents whom I have named, in the order designated.

(6) HEALTH INFORMATION AND OTHER MEDICAL RECORDS: In addition to the other powers granted by this document, I grant to my agent the power and authority to serve as my personal representative for all purposes of the federal Health Insurance Portability and Accountability Act of 1996, 42 United States Code, Section 1320d et seq., "HIPAA," and its regulations, 45 Code of Federal Regulations 160-164, during any time that my agent is exercising authority under this document. I intend for my agent to be treated as I would be with respect to my rights regarding the use and disclosure of my individually identifiable health information and other medical records. This release authority applies to any information governed by HIPAA.

I authorize any physician, health-care professional, dentist, health plan, hospital, clinic, laboratory, pharmacy or other covered health-care provider, any

insurance company and any health-care clearinghouse that has provided treatment or services to me or that has paid for, or is seeking reimbursement from me for, such services to give, disclose and release to my agent, without restriction, all of my individually identifiable health information and medical records regarding any past, present or future medical or mental health condition, to include all information relating to the diagnosis and treatment of HIV/AIDS, sexually transmitted diseases, mental illness and drug or alcohol abuse.

The authority given to my agent supersedes any prior agreement that I may have made with my health-care providers to restrict access to or disclosure of my individually identifiable health information. The authority given to my agent has no expiration date and expires only in the event that I revoke the authority in writing and deliver it to my health-care providers.

See title page for effective date, unless otherwise indicated.



CHAPTER 619

H.P. 604 - L.D. 827

An Act Regarding Wildlife Habitat Conservation

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 36 MRSA §1102, sub-§10 is enacted to read:

10. Wildlife habitat. "Wildlife habitat" means land that is subject to a written management agreement between the landowner and either the Department of Inland Fisheries and Wildlife or the Department of Conservation to ensure that the habitat benefits provided by the land are not lost. Management agreements may be revised or updated by mutual consent of both parties at any time. Management agreements must be renewed at least every 10 years. "Wildlife habitat" must also meet one of the following criteria:

A. The land is designated by the Department of Inland Fisheries and Wildlife as supporting important wildlife habitat;

B. The land supports the life cycle of any species of wildlife as identified by the Department of Inland Fisheries and Wildlife;

C. The land is identified by the Department of Conservation as supporting a natural vegetation community; or