CERTIFICATION OF ENROLLMENT

**SENATE BILL 5132**

67th Legislature

2021 Regular Session

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| Passed by the Senate February 10, 2021  Yeas 48 Nays 0  **President of the Senate**  Passed by the House April 8, 2021  Yeas 86 Nays 12  **Speaker of the House of Representatives** | CERTIFICATE  I, Brad Hendrickson, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SENATE BILL 5132** as passed by the Senate and the House of Representatives on the dates hereon set forth.  Secretary |
| Approved |  |
| **Governor of the State of Washington** | **Secretary of State**  **State of Washington** |

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**SENATE BILL 5132**

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Passed Legislature - 2021 Regular Session

**State of Washington 67th Legislature 2021 Regular Session**

**By** Senators Pedersen, Padden, and Mullet; by request of Uniform Law Commission

AN ACT Relating to trusts and estates; amending RCW 11.02.005, 11.12.020, 11.12.040, 11.20.020, 11.20.070, 30B.24.005, 11.12.110, 11.12.120, 11.95.110, 11.95.120, 11.95.130, 11.95.140, 11.95.150, 11.97.010, 11.97.900, 11.40.140, 11.48.120, 11.48.130, 11.68.041, 11.68.050, 11.68.065, 11.68.070, 11.68.090, 11.68.095, 11.68.100, 11.68.110, 11.68.112, 11.68.114, 11.68.120, 11.96A.030, 11.96A.110, 11.96A.220, 11.96A.220, 11.96A.230, 11.98.900, 11.100.050, 11.104A.900, and 11.114.020; adding new sections to chapter 11.12 RCW; adding new sections to chapter 11.68 RCW; adding new chapters to Title 11 RCW; creating a new section; recodifying RCW 11.104A.901, 11.104A.907, 11.95.100, 11.95.110, 11.95.120, 11.95.130, 11.95.140, and 11.95.150; repealing RCW 11.104A.001, 11.104A.005, 11.104A.010, 11.104A.020, 11.104A.030, 11.104A.040, 11.104A.050, 11.104A.060, 11.104A.070, 11.104A.080, 11.104A.090, 11.104A.100, 11.104A.110, 11.104A.120, 11.104A.130, 11.104A.140, 11.104A.150, 11.104A.160, 11.104A.170, 11.104A.180, 11.104A.190, 11.104A.200, 11.104A.210, 11.104A.220, 11.104A.230, 11.104A.240, 11.104A.250, 11.104A.260, 11.104A.270, 11.104A.280, 11.104A.290, 11.104A.300, 11.104A.900, 11.104A.904, 11.104A.905, 11.104A.906, 11.95.010, 11.95.020, 11.95.030, 11.95.040, 11.95.060, 11.95.070, 11.95.160, and 11.95.900; providing effective dates; and providing an expiration date.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

**PART I**

**UNIFORM ELECTRONIC WILLS ACT**

NEW SECTION. **Sec.**  SHORT TITLE. Sections 1002 through 1011 of this act may be known and cited as the uniform electronic wills act.

NEW SECTION. **Sec.**  DEFINITION. The definition in this section applies throughout sections 1001 through 1011 of this act unless the context clearly requires otherwise.

"Sign" means, with present intent to authenticate or adopt a record, to affix to or logically associate with the record an electronic symbol, an electronic sound, or process.

NEW SECTION. **Sec.**  LAW APPLICABLE TO ELECTRONIC WILL; PRINCIPLES OF EQUITY. An electronic will is a will for all purposes of the law of this state. The law of this state applicable to wills and principles of equity apply to an electronic will, except as modified by sections 1001 through 1011 of this act.

NEW SECTION. **Sec.**  CHOICE OF LAW REGARDING EXECUTION. A will executed electronically but not in compliance with section 1005(1) of this act is an electronic will under sections 1001 through 1011 of this act if executed in compliance with the law of the jurisdiction where the testator is:

(1) Physically located when the will is signed; or

(2) Domiciled or resides when the will is signed or when the testator dies.

NEW SECTION. **Sec.**  EXECUTION OF ELECTRONIC WILL. (1) Subject to section 1006(4) of this act, an electronic will must be:

(a) A record that is readable as text at the time of signing under (b) of this subsection;

(b) Signed by:

(i) The testator; or

(ii) Another individual in the testator's name, in the testator's physical presence, and by the testator's direction; and

(c) Signed in the physical or electronic presence of the testator and at the testator's direction or request by at least two competent witnesses after:

(i) The signing of the will under (b) of this subsection; or

(ii) The testator's acknowledgment of the signing of the will under (b) of this subsection or acknowledgment of the will.

(2) Intent of a testator that the record under subsection (1)(a) of this section be the testator's electronic will may be established by extrinsic evidence.

NEW SECTION. **Sec.**  ELECTRONIC WILL ATTESTED AND MADE SELF-PROVING AT TIME OF EXECUTION. (1) An electronic will may be simultaneously executed, attested, and made self-proving if:

(a) The affidavits of the attesting witnesses are affixed to or logically associated with the electronic will; and

(b) The qualified custodian maintains custody of the electronic will at all times following execution by the testator and witnesses.

(2) The affidavits under subsection (1)(a) of this section must state such facts as the attesting witnesses would be required to testify to in court to prove such electronic will, and must be:

(a) Made before an officer authorized to administer oaths or, if fewer than two attesting witnesses are physically present in the same location as the testator at the time of signing under section 1005(1)(b) of this act, before an officer authorized under RCW 42.45.280; and

(b) Evidenced by the officer's certificate under official seal affixed to or logically associated with the electronic will.

(3)(a) If made before an officer authorized to administer oaths, the acknowledgment and affidavits under subsection (1) of this section must be in substantially the following form:

I, ..... (name), the testator, and, being sworn, declare to the undersigned officer that I sign this instrument as my electronic will, I willingly sign it or willingly direct another individual to sign it for me, I execute it as my voluntary act for the purposes expressed in this instrument, and I am 18 years of age or older, of sound mind, and under no constraint or undue influence.

..... (signature)

Testator

We, ..... (name) and ..... (name), witnesses, being sworn, declare to the undersigned officer that the testator signed this instrument as the testator's electronic will, that the testator willingly signed it or willingly directed another individual to sign for the testator, and that each of us, in the physical or electronic presence of the testator, signs this instrument as witness to the testator's signing, and to the best of our knowledge the testator is 18 years of age or older, of sound mind, and under no constraint or undue influence.

..... (signature)

Witness

..... (signature)

Witness

Certificate of officer:

State of .....

County of .....

Subscribed, sworn to, and acknowledged before me by ..... (name), the testator, and subscribed and sworn to before me by ..... (name) and ..... (name), witnesses, this ..... day of ....., .....

(Seal) .....

(Signed)

.....

(Capacity of officer)

(b) If made pursuant to chapter 5.50 RCW, the acknowledgment and affidavits under subsection (1) of this section must be in substantially the following form:

I, ..... (name), the testator, declare under penalty of perjury under the law of Washington that the following is true and correct: That I sign this instrument as my electronic will, I willingly sign it or willingly direct another individual to sign it for me, I execute it as my voluntary act for the purposes expressed in this instrument, and I am 18 years of age or older, of sound mind, and under no constraint or undue influence.

..... (signature)

Testator

We, ..... (name) and ..... (name), witnesses, declare under penalty of perjury under the law of Washington that the following is true and correct: That the testator signed this instrument as the testator's electronic will, that the testator willingly signed it or willingly directed another individual to sign for the testator, and that each of us, in the physical or electronic presence of the testator, signs this instrument as witness to the testator's signing, and to the best of our knowledge the testator is 18 years of age or older, of sound mind, and under no constraint or undue influence.

..... (signature)

Witness

..... (signature)

Witness

(4) A signature physically or electronically affixed to an affidavit that is affixed to or logically associated with an electronic will under sections 1001 through 1011 of this act is deemed a signature of the electronic will under section 1005(1) of this act.

NEW SECTION. **Sec.**  QUALIFIED CUSTODIAN OF ELECTRONIC WILL. (1) The following may serve as a qualified custodian:

(a) Any suitable person over the age of 18 years, who is a resident of the state of Washington at the time the electronic will was signed;

(b) A trust company regularly organized under the laws of this state and national banks when authorized to do so;

(c) A nonprofit corporation, if the articles of incorporation or bylaws of that corporation permit the action and if the corporation is in compliance with all applicable provisions of Title 24 RCW;

(d) Any professional service corporations, professional limited liability companies, or limited liability partnerships, that are duly organized under the laws of this state and whose shareholders, members, or partners, respectively, are exclusively attorneys; and

(e) A will repository in the county in which the testator is domiciled.

(2) The following are disqualified to serve as a qualified custodian:

(a) Minors, persons of unsound mind, or persons who have been convicted of (i) any felony or (ii) any crime involving moral turpitude;

(b) An individual who is an heir, beneficiary, or otherwise has an interest in testator's estate; and

(c) Corporations, limited liability companies, limited liability partnerships, except as provided in subsection (1) of this section.

NEW SECTION. **Sec.**  DUTY OF QUALIFIED CUSTODIAN OF ELECTRONIC WILL. (1) The qualified custodian of an electronic will shall, within 30 days after he or she receives knowledge of the death of the testator:

(a) Deliver said electronic will to the court having jurisdiction or to the person named in the electronic will as executor; and

(b) Make an affidavit before any person authorized to administer oaths, stating (i) the manner in which the qualified custodian received the electronic will; (ii) that the electronic will was at all times in the custody of the qualified custodian; and (iii) that the electronic will in the possession of the qualified custodian has not been altered in any way since the custodian received the electronic will. Such affidavit must be delivered with the electronic will to the court having jurisdiction or the person named as executor under the electronic will.

(2) Any person who willfully violates any of the provisions of this section is liable to any party aggrieved for the damages which may be sustained by such violation.

NEW SECTION. **Sec.**  CERTIFICATION OF PAPER COPY. An individual may create a certified paper copy of an electronic will by affirming under penalty of perjury that a paper copy of the electronic will is a complete, true, and accurate copy of the electronic will. If the electronic will is made self-proving, the certified paper copy of the will must include the self-proving affidavits.

NEW SECTION. **Sec.**  UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

NEW SECTION. **Sec.**  TRANSITIONAL PROVISION. Sections 1001 through 1010 of this act apply to the electronic will of a decedent who dies on or after the effective date of this section.

**Sec.**  RCW 11.02.005 and 2020 c 312 s 708 are each amended to read as follows:

When used in this title, unless otherwise required from the context:

(1) "Administrator" means a personal representative of the estate of a decedent and the term may be used in lieu of "personal representative" wherever required by context.

(2) "Codicil" means a will that modifies or partially revokes an existing earlier will. A codicil need not refer to or be attached to the earlier will.

(3) "Degree of kinship" means the degree of kinship as computed according to the rules of the civil law; that is, by counting upward from the intestate to the nearest common ancestor and then downward to the relative, the degree of kinship being the sum of these two counts.

(4) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(5) "Electronic presence" means the relationship of two or more individuals in different locations communicating in real time to the same extent as if the individuals were physically present in the same location.

(6) "Electronic will" means a will or codicil executed in compliance with sections 1001 through 1011 of this act.

(7) "Executor" means a personal representative of the estate of a decedent appointed by will and the term may be used in lieu of "personal representative" wherever required by context.

((~~(5)~~)) (8) "Guardian," "limited guardian," "conservator," or "limited conservator" means a personal representative of the person or estate of a person who has been placed under a guardianship under RCW 11.130.265 or who has been placed under a conservatorship under RCW 11.130.360 and the term may be used in lieu of "personal representative" wherever required by context.

((~~(6)~~)) (9) "Heirs" denotes those persons, including the surviving spouse or surviving domestic partner, who are entitled under the statutes of intestate succession to the real and personal property of a decedent on the decedent's death intestate.

((~~(7)~~)) (10) "Internal revenue code" means the United States internal revenue code of 1986, as amended or renumbered as of January 1, 2001.

((~~(8)~~)) (11) "Issue" means all the lineal descendants of an individual. An adopted individual is a lineal descendant of each of his or her adoptive parents and of all individuals with regard to which each adoptive parent is a lineal descendant. A child conceived prior to the death of a parent but born after the death of the deceased parent is considered to be the surviving issue of the deceased parent for purposes of this title.

((~~(9)~~)) (12) "Net estate" refers to the real and personal property of a decedent exclusive of homestead rights, exempt property, the family allowance and enforceable claims against, and debts of, the deceased or the estate.

((~~(10)~~)) (13) "Nonprobate asset" means those rights and interests of a person having beneficial ownership of an asset that pass on the person's death under a written instrument or arrangement other than the person's will. "Nonprobate asset" includes, but is not limited to, a right or interest passing under a joint tenancy with right of survivorship, joint bank account with right of survivorship, transfer on death deed, payable on death or trust bank account, transfer on death security or security account, deed or conveyance if possession has been postponed until the death of the person, trust of which the person is grantor and that becomes effective or irrevocable only upon the person's death, community property agreement, individual retirement account or bond, or note or other contract the payment or performance of which is affected by the death of the person. "Nonprobate asset" does not include: A payable-on-death provision of a life insurance policy, annuity, or other similar contract, or of an employee benefit plan; a right or interest passing by descent and distribution under chapter 11.04 RCW; a right or interest if, before death, the person has irrevocably transferred the right or interest, the person has waived the power to transfer it or, in the case of contractual arrangement, the person has waived the unilateral right to rescind or modify the arrangement; or a right or interest held by the person solely in a fiduciary capacity. For the definition of "nonprobate asset" relating to revocation of a provision for a former spouse upon dissolution of marriage or declaration of invalidity of marriage, RCW 11.07.010(5) applies. For the definition of "nonprobate asset" relating to testamentary disposition of nonprobate assets, see RCW 11.11.010(7).

((~~(11)~~)) (14) "Personal representative" includes executor, administrator, special administrator, and conservator or limited conservator and special representative.

((~~(12)~~)) (15) "Real estate" includes, except as otherwise specifically provided herein, all lands, tenements, and hereditaments, and all rights thereto, and all interest therein possessed and claimed in fee simple, or for the life of a third person.

((~~(13)~~)) (16) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(17) "Representation" refers to a method of determining distribution in which the takers are in unequal degrees of kinship with respect to a decedent, and is accomplished as follows: After first determining who, of those entitled to share in the estate, are in the nearest degree of kinship, the estate is divided into equal shares, the number of shares being the sum of the number of persons who survive the decedent who are in the nearest degree of kinship and the number of persons in the same degree of kinship who died before the decedent but who left issue surviving the decedent; each share of a deceased person in the nearest degree must be divided among those of the deceased person's issue who survive the decedent and have no ancestor then living who is in the line of relationship between them and the decedent, those more remote in degree taking together the share which their ancestor would have taken had he or she survived the decedent.

((~~(14)~~)) (18) References to "section 2033A" of the internal revenue code in wills, trust agreements, powers of appointment, beneficiary designations, and other instruments governed by or subject to this title are deemed to refer to the comparable or corresponding provisions of section 2057 of the internal revenue code, as added by section 6006(b) of the internal revenue service restructuring act of 1998 (H.R. 2676, P.L. 105-206); and references to the section 2033A "exclusion" are deemed to mean the section 2057 deduction.

((~~(15)~~)) (19) "Settlor" has the same meaning as provided for "trustor" in this section.

((~~(16)~~)) (20) "Special administrator" means a personal representative of the estate of a decedent appointed for limited purposes and the term may be used in lieu of "personal representative" wherever required by context.

((~~(17)~~)) (21) "Surviving spouse" or "surviving domestic partner" does not include an individual whose marriage to or state registered domestic partnership with the decedent has been terminated, dissolved, or invalidated unless, by virtue of a subsequent marriage or state registered domestic partnership, he or she is married to or in a domestic partnership with the decedent at the time of death. A decree of separation that does not terminate the status of spouses or domestic partners is not a dissolution or invalidation for purposes of this subsection.

((~~(18)~~)) (22) "Trustee" means an original, added, or successor trustee and includes the state, or any agency thereof, when it is acting as the trustee of a trust to which chapter 11.98 RCW applies.

((~~(19)~~)) (23) "Trustor" means a person, including a testator, who creates, or contributes property to, a trust.

((~~(20)~~)) (24) "Will" means an instrument validly executed as required by RCW 11.12.020 or sections 1001 through 1011 of this act.

Words that import the singular number may also be applied to the plural of persons and things.

Words importing the masculine gender only may be extended to females also.

**Sec.**  RCW 11.12.020 and 1990 c 79 s 1 are each amended to read as follows:

(1) ((~~Every~~)) Except as provided in sections 1001 through 1011 of this act, every will shall be in writing signed by the testator or by some other person under the testator's direction in the testator's presence or electronic presence, and shall be attested by two or more competent witnesses, by subscribing their names to the will, or by signing an affidavit that complies with RCW 11.20.020(2), while in the presence or electronic presence of the testator and at the testator's direction or request: PROVIDED, That a last will and testament, executed in the mode prescribed by the law of the place where executed or of the testator's domicile, either at the time of the will's execution or at the time of the testator's death, shall be deemed to be legally executed, and shall be of the same force and effect as if executed in the mode prescribed by the laws of this state. Any will executed by a testator and witnesses who are not in the same physical location but in the electronic presence of one another in accordance with this section may be executed, attested, or acknowledged in counterparts, which together shall be considered a single document.

(2) This section shall be applied to all wills, whenever executed, including those subject to pending probate proceedings.

**Sec.**  RCW 11.12.040 and 1994 c 221 s 12 are each amended to read as follows:

(1) A will, or any part thereof, can be revoked:

(a) By a subsequent will that revokes, or partially revokes, the prior will expressly or by inconsistency; or

(b) By being burnt, torn, canceled, obliterated, ((~~or~~)) destroyed, or a physical act, with the intent and for the purpose of revoking the same, by the testator or by another person in the presence and by the direction of the testator. If such act is done by any person other than the testator, the direction of the testator and the facts of such injury or destruction must be proved by two witnesses.

(2) Revocation of a will in its entirety revokes its codicils, unless revocation of a codicil would be contrary to the testator's intent.

**Sec.**  RCW 11.20.020 and 2010 c 8 s 2016 are each amended to read as follows:

(1) Applications for the probate of a will and for letters testamentary, or either, may be made to the judge of the court having jurisdiction and the court may immediately hear the proofs and either probate or reject such will as the testimony may justify. Upon such hearing the court shall make and cause to be entered a formal order, either establishing and probating such will, or refusing to establish and probate the same, and such order shall be conclusive except in the event of a contest of such will as hereinafter provided. All testimony in support of the will shall be reduced to writing, signed by the witnesses, and certified by the judge of the court. If the application for probate of a will does not request the appointment of a personal representative and the court enters an adjudication of testacy establishing such will no further administration shall be required except as commenced pursuant to RCW 11.28.330 or 11.28.340.

(2) In addition to the foregoing procedure for the proof of wills, any or all of the attesting witnesses to a will may, at the request of the testator or, after his or her decease, at the request of the executor or any person interested under it, make an affidavit before any person authorized to administer oaths, stating such facts as they would be required to testify to in court to prove such will, which affidavit may be written on the will or may be ((~~attached to~~)) affixed or logically associated with the will or ((~~to~~)) a photographic copy of the will or an electronic will. The sworn statement of any witness so taken shall be accepted by the court as if it had been taken before the court.

(3) An electronic will, the custody of which has not been maintained by a qualified custodian, must be treated as a lost or destroyed will under RCW 11.20.070.

**Sec.**  RCW 11.20.070 and 1994 c 221 s 20 are each amended to read as follows:

(1) If a will has been lost or destroyed under circumstances such that the loss or destruction does not have the effect of revoking the will, or is an electronic will, custody of which has not been maintained by a qualified custodian, the court may take proof of the execution and validity of the will and establish it, notice to all persons interested having been first given. The proof must be reduced to writing and signed by any witnesses who have testified as to the execution and validity, and must be filed with the clerk of the court.

(2) The provisions of a lost or destroyed will, or an electronic will, custody of which has not been maintained by a qualified custodian, must be proved by clear, cogent, and convincing evidence, consisting at least in part of a witness to either its contents or the authenticity of a copy of the will.

(3) When a lost or destroyed will, or an electronic will, custody of which has not been maintained by a qualified custodian, is established under subsections (1) and (2) of this section, its provisions must be distinctly stated in the judgment establishing it, and the judgment must be recorded as wills are required to be recorded. A personal representative may be appointed by the court in the same manner as is herein provided with reference to original wills presented to the court for probate.

NEW SECTION. **Sec.**  EFFECTIVE DATE. Sections 1001 through 1016 of this act take effect January 1, 2022.

NEW SECTION. **Sec.**  CODIFICATION. Sections 1001 through 1011 of this act are each added to chapter 11.12 RCW.

**PART II**

**UNIFORM FIDUCIARY INCOME AND PRINCIPAL ACT**

**ARTICLE 1**

**GENERAL PROVISIONS**

NEW SECTION. **Sec.**  SHORT TITLE. This chapter may be known and cited as the uniform fiduciary income and principal act.

NEW SECTION. **Sec.**  DEFINITIONS. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Accounting period" means a calendar year, unless a fiduciary selects another period of 12 calendar months or approximately 12 calendar months. The term includes a part of a calendar year or another period of 12 calendar months or approximately 12 calendar months which begins when an income interest begins or ends when an income interest ends.

(2) "Asset-backed security" means a security that is serviced primarily by the cash flows of a discrete pool of fixed or revolving receivables or other financial assets that by their terms convert into cash within a finite time. The term includes rights or other assets that ensure the servicing or timely distribution of proceeds to the holder of the asset-backed security. The term does not include an asset to which section 2401, 2409, or 2414 of this act applies.

(3) "Beneficiary" includes:

(a) For a trust:

(i) A current beneficiary, including a current income beneficiary and a beneficiary that may receive only principal;

(ii) A remainder beneficiary; and

(iii) Any other successor beneficiary; and

(b) For an estate, an heir, legatee, and devisee.

(4) "Court" means the court in this state having jurisdiction relating to a trust or estate.

(5) "Current income beneficiary" means a beneficiary to which a fiduciary may distribute net income, whether or not the fiduciary also may distribute principal to the beneficiary.

(6) "Distribution" means a payment or transfer by a fiduciary to a beneficiary in the beneficiary's capacity as a beneficiary, made under the terms of the trust, without consideration other than the beneficiary's right to receive the payment or transfer under the terms of the trust. "Distribute," "distributed," and "distributee" have corresponding meanings.

(7) "Estate" means a decedent's estate. The term includes the property of the decedent as the estate is originally constituted and the property of the estate as it exists at any time during administration.

(8) "Fiduciary" includes a trustee, personal representative, and person acting under a delegation from a fiduciary. The term includes a person that holds property for a successor beneficiary whose interest may be affected by an allocation of receipts and expenditures between income and principal. If there are two or more cofiduciaries, the term includes all cofiduciaries acting under the terms of the trust and applicable law.

(9) "Income" means money or other property a fiduciary receives as current return from principal. The term includes a part of receipts from a sale, exchange, or liquidation of a principal asset, to the extent provided in article 4 of this chapter.

(10) "Income interest" means the right of a current income beneficiary to receive all or part of net income, whether the terms of the trust require the net income to be distributed or authorize the net income to be distributed in the fiduciary's discretion. The term includes the right of a current beneficiary to use property held by a fiduciary.

(11) "Independent person" means a person that is not:

(a) For a trust:

(i) A beneficiary that is a distributee or permissible distributee of trust income or principal or would be a distributee or permissible distributee of trust income or principal if either the trust or the interests of the distributees or permissible distributees of trust income or principal were terminated, assuming no power of appointment is exercised;

(ii) A settlor of the trust; or

(iii) An individual whose legal obligation to support a beneficiary may be satisfied by a distribution from the trust;

(b) For an estate, a beneficiary;

(c) A spouse, parent, brother, sister, or issue of an individual described in (a) or (b) of this subsection;

(d) A corporation, partnership, limited liability company, or other entity in which persons described in (a) through (c) of this subsection, in the aggregate, have voting control; or

(e) An employee of a person described in (a), (b), (c), or (d) of this subsection.

(12) "Mandatory income interest" means the right of a current income beneficiary to receive net income that the terms of the trust require the fiduciary to distribute.

(13) "Net income" means the total allocations during an accounting period to income under the terms of a trust and this chapter minus the disbursements during the period, other than distributions, allocated to income under the terms of the trust and this chapter. To the extent the trust is a unitrust under article 3 of this chapter, the term means the unitrust amount determined under article 3 of this chapter. The term includes an adjustment from principal to income under section 2203 of this act. The term does not include an adjustment from income to principal under section 2203 of this act.

(14) "Person" means an individual, estate, trust, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or other legal entity.

(15) "Personal representative" means an executor, administrator, successor personal representative, special administrator, or person that performs substantially the same function with respect to an estate under the law governing the person's status.

(16) "Principal" means property held in trust for distribution to, production of income for, or use by a current or successor beneficiary.

(17) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(18) "Settlor" means a person, including a testator, that creates or contributes property to a trust. If more than one person creates or contributes property to a trust, the term includes each person, to the extent 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.

(19) "Special tax benefit" means:

(a) Exclusion of a transfer to a trust from gifts described in 26 U.S.C. Sec. 2503(b) of the federal internal revenue code of 1986, as amended, as of the effective date of this section, because of the qualification of an income interest in the trust as a present interest in property;

(b) Status as a qualified subchapter S trust described in 26 U.S.C. Sec. 1361(d)(3) of the federal internal revenue code of 1986, as amended, as of the effective date of this section, at a time the trust holds stock of an S corporation described in 26 U.S.C. Sec. 1361(a)(1) of the federal internal revenue code of 1986, as amended, as of the effective date of this section;

(c) An estate or gift tax marital deduction for a transfer to a trust under 26 U.S.C. Sec. 2056 or 2523 of the federal internal revenue code of 1986, as amended, as of the effective date of this section, which depends or depended in whole or in part on the right of the settlor's spouse to receive the net income of the trust;

(d) Exemption in whole or in part of a trust from the federal generation-skipping transfer tax imposed by 26 U.S.C. Sec. 2601 of the federal internal revenue code of 1986, as amended, as of the effective date of this section, because the trust was irrevocable on September 25, 1985, if there is any possibility that:

(i) A taxable distribution, as defined in 26 U.S.C. Sec. 2612(b) of the federal internal revenue code of 1986, as amended, as of the effective date of this section, could be made from the trust; or

(ii) A taxable termination, as defined in 26 U.S.C. Sec. 2612(a) of the federal internal revenue code of 1986, as amended, as of the effective date of this section, could occur with respect to the trust; or

(e) An inclusion ratio, as defined in 26 U.S.C. Sec. 2642(a) of the federal internal revenue code of 1986, as amended, as of the effective date of this section, of the trust which is less than one, if there is any possibility that:

(i) A taxable distribution, as defined in 26 U.S.C. Sec. 2612(b) of the federal internal revenue code of 1986, as amended, as of the effective date of this section, could be made from the trust; or

(ii) A taxable termination, as defined in 26 U.S.C. Sec. 2612(a) of the federal internal revenue code of 1986, as amended, as of the effective date of this section, could occur with respect to the trust.

(20) "Successive interest" means the interest of a successor beneficiary.

(21) "Successor beneficiary" means a person entitled to receive income or principal or to use property when an income interest or other current interest ends.

(22) "Terms of a trust" means:

(a) Except as otherwise provided in (b) of this subsection, the manifestation of the settlor's intent regarding a trust's provisions as:

(i) Expressed in the trust instrument; or

(ii) Established by other evidence that would be admissible in a judicial proceeding;

(b) The trust's provisions as established, determined, or amended by:

(i) A trustee or trust director in accordance with applicable law;

(ii) Court order; or

(iii) A nonjudicial settlement agreement under chapter 11.98A RCW; or

(c) For an estate, a will.

(23) "Trust":

(a) Includes:

(i) An express trust, private or charitable, with additions to the trust, wherever and however created; and

(ii) A trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust; and

(b) Does not include:

(i) A constructive trust;

(ii) A resulting trust, conservatorship, guardianship, multiparty account, custodial arrangement for a minor, business trust, voting trust, security arrangement, liquidation trust, or trust for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, retirement benefits, or employee benefits of any kind; or

(iii) An arrangement under which a person is a nominee, escrowee, or agent for another.

(24) "Trustee" means a person, other than a personal representative, that owns or holds property for the benefit of a beneficiary. The term includes an original, additional, or successor trustee, whether or not appointed or confirmed by a court.

(25) "Will" means any testamentary instrument recognized by applicable law which makes a legally effective disposition of an individual's property, effective at the individual's death. The term includes a codicil or other amendment to a testamentary instrument.

NEW SECTION. **Sec.**  SCOPE. Except as otherwise provided in the terms of a trust or this chapter, this chapter applies to a trust or estate.

NEW SECTION. **Sec.**  GOVERNING LAW. (1) Except as otherwise provided in the terms of a trust or this chapter, this chapter applies when this state is the principal place of administration of a trust or estate, subject to the following rules:

(a) If the trust was created before January 1, 2022, this chapter applies only to a decision or action occurring on or after January 1, 2022; and

(b) If the principal place of administration of the trust is changed to this state on or after January 1, 2022, this chapter applies only to a decision or action occurring on or after the date of the change.

(2) Without precluding other means to establish a sufficient connection with the designated jurisdiction in a directed trust, terms of the trust which designate the principal place of administration of the trust 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;

(b) A trust director's principal place of business is located in or a trust director is a resident of the designated jurisdiction; or

(c) All or part of the administration occurs in the designated jurisdiction.

(3) By accepting the trusteeship of a trust having its principal place of administration in this state or by moving the principal place of administration of a trust to this state, the trustee submits to the application of this chapter to any matter within the scope of this chapter involving the trust.

**ARTICLE 2**

**FIDUCIARY DUTIES AND JUDICIAL REVIEW**

NEW SECTION. **Sec.**  FIDUCIARY DUTIES—GENERAL PRINCIPLES. (1) In making an allocation or determination or exercising discretion under this chapter, a fiduciary shall:

(a) Act in good faith, based on what is fair and reasonable to all beneficiaries;

(b) Administer a trust or estate impartially, except to the extent the terms of the trust manifest an intent that the fiduciary shall or may favor one or more beneficiaries;

(c) Administer the trust or estate in accordance with the terms of the trust, even if there is a different provision in this chapter; and

(d) Administer the trust or estate in accordance with this chapter, except to the extent the terms of the trust provide otherwise or authorize the fiduciary to determine otherwise.

(2) A fiduciary's allocation, determination, or exercise of discretion under this chapter is presumed to be fair and reasonable to all beneficiaries. A fiduciary may exercise a discretionary power of administration given to the fiduciary by the terms of the trust, and an exercise of the power which produces a result different from a result required or permitted by this chapter does not create an inference that the fiduciary abused the fiduciary's discretion.

(3) A fiduciary shall:

(a) Add a receipt to principal, to the extent neither the terms of the trust nor this chapter allocates the receipt between income and principal; and

(b) Charge a disbursement to principal, to the extent neither the terms of the trust nor this chapter allocates the disbursement between income and principal.

(4) A fiduciary may exercise the power to adjust under section 2203 of this act, convert an income trust to a unitrust under section 2303(1)(a) of this act, change the percentage or method used to calculate a unitrust amount under section 2303(1)(b) of this act, or convert a unitrust to an income trust under section 2303(1)(c) of this act, if the fiduciary determines the exercise of the power is necessary to administer the trust or estate in accordance with the requirements of subsection (1) of this section.

(5) Factors the fiduciary must consider in making the determination under subsection (4) of this section include:

(a) The terms of the trust;

(b) The nature, distribution standards, and expected duration of the trust;

(c) The effect of the allocation rules, including specific adjustments between income and principal, under articles 4 through 7 of this chapter;

(d) The desirability of liquidity and regularity of income;

(e) The desirability of the preservation and appreciation of principal;

(f) The extent to which an asset is used or may be used by a beneficiary;

(g) The increase or decrease in the value of principal assets, reasonably determined by the fiduciary;

(h) Whether and to what extent the terms of the trust give the fiduciary power to accumulate income or invade principal or prohibit the fiduciary from accumulating income or invading principal;

(i) The extent to which the fiduciary has accumulated income or invaded principal in preceding accounting periods;

(j) The effect of current and reasonably expected economic conditions; and

(k) The reasonably expected tax consequences of the exercise of the power.

NEW SECTION. **Sec.**  JUDICIAL REVIEW OF EXERCISE OF DISCRETIONARY POWER—REQUEST FOR INSTRUCTION. (1) In this section, "fiduciary decision" means:

(a) A fiduciary's allocation between income and principal or other determination regarding income and principal required or authorized by the terms of the trust or this chapter;

(b) The fiduciary's exercise or nonexercise of a discretionary power regarding income and principal granted by the terms of the trust or this chapter, including the power to adjust under section 2203 of this act, convert an income trust to a unitrust under section 2303(1)(a) of this act, change the percentage or method used to calculate a unitrust amount under section 2303(1)(b) of this act, or convert a unitrust to an income trust under section 2303(1)(c) of this act; or

(c) The fiduciary's implementation of a decision described in (a) or (b) of this subsection.

(2) The court may not order a fiduciary to change a fiduciary decision unless the court determines that the fiduciary decision was an abuse of the fiduciary's discretion.

(3) If the court determines that a fiduciary decision was an abuse of the fiduciary's discretion, the court may order a remedy authorized by law. To place the beneficiaries in the positions the beneficiaries would have occupied if there had not been an abuse of the fiduciary's discretion, the court may order:

(a) The fiduciary to exercise or refrain from exercising the power to adjust under section 2203 of this act;

(b) The fiduciary to exercise or refrain from exercising the power to convert an income trust to a unitrust under section 2303(1)(a) of this act, change the percentage or method used to calculate a unitrust amount under section 2303(1)(b) of this act, or convert a unitrust to an income trust under section 2303(1)(c) of this act;

(c) The fiduciary to distribute an amount to a beneficiary;

(d) A beneficiary to return some or all of a distribution; or

(e) The fiduciary to withhold an amount from one or more future distributions to a beneficiary.

(4) On petition by a fiduciary for instruction, the court may determine whether a proposed fiduciary decision will result in an abuse of the fiduciary's discretion. If the petition describes the proposed decision, contains sufficient information to inform the beneficiary of the reasons for making the proposed decision and the facts on which the fiduciary relies, and explains how the beneficiary will be affected by the proposed decision, a beneficiary that opposes the proposed decision has the burden to establish that it will result in an abuse of the fiduciary's discretion.

NEW SECTION. **Sec.**  FIDUCIARY'S POWER TO ADJUST. (1) Except as otherwise provided in the terms of a trust or this section, a fiduciary, in a record, without court approval, may adjust between income and principal if the fiduciary determines the exercise of the power to adjust is necessary to administer the trust or estate in accordance with the requirements of section 2201(1) of this act.

(2) This section does not create a duty to exercise or consider the power to adjust under subsection (1) of this section or to inform a beneficiary about the applicability of this section.

(3) A fiduciary that in good faith exercises or fails to exercise the power to adjust under subsection (1) of this section is not liable to a person affected by the exercise or failure to exercise.

(4) In deciding whether and to what extent to exercise the power to adjust under subsection (1) of this section, a fiduciary shall consider all factors the fiduciary considers relevant, including relevant factors in section 2201(5) of this act and the application of sections 2401(9), 2408, and 2413 of this act.

(5) A fiduciary may not exercise the power under subsection (1) of this section to make an adjustment or under section 2408 of this act to make a determination that an allocation is insubstantial if:

(a) The adjustment or determination would reduce the amount payable to a current income beneficiary from a trust that qualifies for a special tax benefit, except to the extent the adjustment is made to provide for a reasonable apportionment of the total return of the trust between the current income beneficiary and successor beneficiaries;

(b) The adjustment or determination would change the amount payable to a beneficiary, as a fixed annuity or a fixed fraction of the value of the trust assets, under the terms of the trust;

(c) The adjustment or determination would reduce an amount that is permanently set aside for a charitable purpose under the terms of the trust, unless both income and principal are set aside for the charitable purpose;

(d) Possessing or exercising the power would cause a person to be treated as the owner of all or part of the trust for federal income tax purposes;

(e) Possessing or exercising the power would cause all or part of the value of the trust assets to be included in the gross estate of an individual for federal estate tax purposes;

(f) Possessing or exercising the power would cause an individual to be treated as making a gift for federal gift tax purposes;

(g) The fiduciary is not an independent person;

(h) The trust is irrevocable and provides for income to be paid to the settlor and possessing or exercising the power would cause the adjusted principal or income to be considered an available resource or available income under a public benefit program; or

(i) The trust is a unitrust under article 3 of this chapter.

(6) If subsection (5)(d), (e), (f), or (g) of this section applies to a fiduciary:

(a) A cofiduciary to which subsection (5)(d) through (g) of this section does not apply may exercise the power to adjust, unless the exercise of the power by the remaining cofiduciary or cofiduciaries is not permitted by the terms of the trust or law other than this chapter; or

(b) If there is no cofiduciary to which subsection (5)(d) through (g) of this section does not apply, the fiduciary may appoint a cofiduciary to which subsection (5)(d) through (g) of this section does not apply, which may be a special fiduciary with limited powers, and the appointed cofiduciary may exercise the power to adjust under subsection (1) of this section, unless the appointment of a cofiduciary or the exercise of the power by a cofiduciary is not permitted by the terms of the trust or law other than this chapter.

(7) A fiduciary may release or delegate to a cofiduciary the power to adjust under subsection (1) of this section if the fiduciary determines that the fiduciary's possession or exercise of the power will or may:

(a) Cause a result described in subsection (5)(a) through (f) or (h) of this section; or

(b) Deprive the trust of a tax benefit or impose a tax burden not described in subsection (5)(a) through (f) of this section.

(8) A fiduciary's release or delegation to a cofiduciary under subsection (7) of this section of the power to adjust under subsection (1) of this section:

(a) Must be in a record;

(b) Applies to the entire power, unless the release or delegation provides a limitation, which may be a limitation to the power to adjust:

(i) From income to principal;

(ii) From principal to income;

(iii) For specified property; or

(iv) In specified circumstances;

(c) For a delegation, may be modified by a redelegation under this subsection by the cofiduciary to which the delegation is made; and

(d) Subject to (c) of this subsection (8), is permanent, unless the release or delegation provides a specified period, including a period measured by the life of an individual or the lives of more than one individual.

(9) Terms of a trust which deny or limit the power to adjust between income and principal do not affect the application of this section, unless the terms of the trust expressly deny or limit the power to adjust under subsection (1) of this section.

(10) The exercise of the power to adjust under subsection (1) of this section in any accounting period may apply to the current period, the immediately preceding period, and one or more subsequent periods.

(11) A description of the exercise of the power to adjust under subsection (1) of this section must be:

(a) Included in a report, if any, sent to all beneficiaries; or

(b) Communicated at least annually to all beneficiaries that receive or are entitled to receive income from the trust or would be entitled to receive a distribution of principal if the trust were terminated at the time the notice is sent, assuming no power of appointment is exercised.

**ARTICLE 3**

**UNITRUST**

NEW SECTION. **Sec.**  DEFINITIONS. The definitions in this section apply throughout this article unless the context clearly requires otherwise.

(1) "Applicable value" means the amount of the net fair market value of a trust taken into account under section 2307 of this act.

(2) "Express unitrust" means a trust for which, under the terms of the trust without regard to this article, income or net income must or may be calculated as a unitrust amount.

(3) "Income trust" means a trust that is not a unitrust.

(4) "Net fair market value of a trust" means the fair market value of the assets of the trust, less the noncontingent liabilities of the trust.

(5) "Unitrust" means a trust for which net income is a unitrust amount. The term includes an express unitrust.

(6) "Unitrust amount" means an amount computed by multiplying a determined value of a trust by a determined percentage. For a unitrust administered under a unitrust policy, the term means the applicable value, multiplied by the unitrust rate.

(7) "Unitrust policy" means a policy described in sections 2305 through 2309 of this act and adopted under section 2303 of this act.

(8) "Unitrust rate" means the rate used to compute the unitrust amount under subsection (6) of this section for a unitrust administered under a unitrust policy.

NEW SECTION. **Sec.**  APPLICATION—DUTIES AND REMEDIES. (1) Except as otherwise provided in subsection (2) of this section, this article applies to:

(a) An income trust, unless the terms of the trust expressly prohibit use of this article by a specific reference to this article or an explicit expression of intent that net income not be calculated as a unitrust amount; and

(b) An express unitrust, except to the extent the terms of the trust explicitly:

(i) Prohibit use of this article by a specific reference to this article;

(ii) Prohibit conversion to an income trust; or

(iii) Limit changes to the method of calculating the unitrust amount.

(2) This article does not apply to a trust described in 26 U.S.C. Sec. 170(f)(2)(B), 642(c)(5), 664(d), or 2702 (a)(3)(A)(ii) or (iii) or (b), as amended, as of the effective date of this section.

(3) An income trust to which this article applies under subsection (1)(a) of this section may be converted to a unitrust under this article regardless of the terms of the trust concerning distributions. Conversion to a unitrust under this article does not affect other terms of the trust concerning distributions of income or principal.

(4) This article applies to an estate only to the extent a trust is a beneficiary of the estate. To the extent of the trust's interest in the estate, the estate may be administered as a unitrust, the administration of the estate as a unitrust may be discontinued, or the percentage or method used to calculate the unitrust amount may be changed, in the same manner as for a trust under this article.

(5) This article does not create a duty to take or consider action under this article or to inform a beneficiary about the applicability of this article.

(6) A fiduciary that in good faith takes or fails to take an action under this article is not liable to a person affected by the action or inaction.

NEW SECTION. **Sec.**  AUTHORITY OF FIDUCIARY. (1) A fiduciary, without court approval, by complying with subsections (2) and (6) of this section, may:

(a) Convert an income trust to a unitrust if the fiduciary adopts in a record a unitrust policy for the trust providing:

(i) That in administering the trust the net income of the trust will be a unitrust amount rather than net income determined without regard to this article; and

(ii) The percentage and method used to calculate the unitrust amount;

(b) Change the percentage or method used to calculate a unitrust amount for a unitrust if the fiduciary adopts in a record a unitrust policy or an amendment or replacement of a unitrust policy providing changes in the percentage or method used to calculate the unitrust amount; or

(c) Convert a unitrust to an income trust if the fiduciary adopts in a record a determination that, in administering the trust, the net income of the trust will be net income determined without regard to this article rather than a unitrust amount.

(2) A fiduciary may take an action under subsection (1) of this section if:

(a) The fiduciary determines that the action will assist the fiduciary to administer a trust impartially;

(b) The fiduciary sends a notice in a record, in the manner required by section 2304 of this act, describing and proposing to take the action;

(c) The fiduciary sends a copy of the notice under (b) of this subsection (2) to each settlor of the trust which is:

(i) If an individual, living; or

(ii) If not an individual, in existence;

(d) At least one member of each class of beneficiaries receiving the notice under (b) of this subsection (2) is:

(i) If an individual, legally competent;

(ii) If not an individual, in existence; or

(iii) Represented in the manner provided in section 2304(2) of this act; and

(e) The fiduciary does not receive, by the date specified in the notice under section 2304(3)(f) of this act, an objection in a record to the action proposed under (b) of this subsection (2) from a person to which the notice under (b) of this subsection (2) is sent.

(3) If a fiduciary receives, not later than the date stated in the notice under section 2304(3)(e) of this act, an objection in a record described in section 2304(3)(d) of this act to a proposed action, the fiduciary or a beneficiary may request the court to have the proposed action taken as proposed, taken with modifications, or prevented. A person described in section 2304(1) of this act may oppose the proposed action in the proceeding under this subsection, whether or not the person:

(a) Consented under section 2304(2) of this act; or

(b) Objected under section 2304(3)(d) of this act.

(4) If, after sending a notice under subsection (2)(b) of this section, a fiduciary decides not to take the action proposed in the notice, the fiduciary shall notify in a record each person described in section 2304(1) of this act of the decision not to take the action and the reasons for the decision.

(5) If a beneficiary requests in a record that a fiduciary take an action described in subsection (1) of this section and the fiduciary declines to act or does not act within 90 days after receiving the request, the beneficiary may request the court to direct the fiduciary to take the action requested.

(6) In deciding whether and how to take an action authorized by subsection (1) of this section, or whether and how to respond to a request by a beneficiary under subsection (5) of this section, a fiduciary shall consider all factors relevant to the trust and the beneficiaries, including relevant factors in section 2201(5) of this act.

(7) A fiduciary may release or delegate the power to convert an income trust to a unitrust under subsection (1)(a) of this section, change the percentage or method used to calculate a unitrust amount under subsection (1)(b) of this section, or convert a unitrust to an income trust under subsection (1)(c) of this section, for a reason described in section 2203(7) of this act and in the manner described in section 2203(8) of this act.

NEW SECTION. **Sec.**  NOTICE. (1) A notice required by section 2303(2)(b) of this act must be sent to:

(a) All beneficiaries that receive or are entitled to receive income from the trust or would be entitled to receive a distribution of principal if the trust were terminated at the time the notice is sent, assuming no power of appointment is exercised; and

(b) Each person that is granted a power over the trust by the terms of the trust, to the extent the power is exercisable when the person is not then serving as a trustee:

(i) Including a:

(A) Power over the investment, management, or distribution of trust property or other matters of trust administration; and

(B) Power to appoint or remove a trustee or person described in this subsection; and

(ii) Excluding a:

(A) Power of appointment;

(B) Power of a beneficiary over the trust, to the extent the exercise or nonexercise of the power affects the beneficial interest of the beneficiary; and

(C) Power over the trust if the terms of the trust provide that the power is held in a nonfiduciary capacity and the power must be held in a nonfiduciary capacity to achieve a tax objective under the federal internal revenue code of 1986, as amended, as of the effective date of this section.

(2) A person may consent in a record at any time to action proposed under section 2303(2)(b) of this act. A notice required by section 2303(2)(b) of this act need not be sent to a person that consents under this subsection.

(3) A notice required by section 2303(2)(b) of this act must include:

(a) The action proposed under section 2303(2)(b) of this act;

(b) For a conversion of an income trust to a unitrust, a copy of the unitrust policy adopted under section 2303(1)(a) of this act;

(c) For a change in the percentage or method used to calculate the unitrust amount, a copy of the unitrust policy or amendment or replacement of the unitrust policy adopted under section 2303(1)(b) of this act;

(d) A statement that the person to which the notice is sent may object to the proposed action by stating in a record the basis for the objection and sending or delivering the record to the fiduciary;

(e) The date by which an objection under (d) of this subsection (3) must be received by the fiduciary, which must be at least 30 days after the date the notice is sent;

(f) The date on which the action is proposed to be taken and the date on which the action is proposed to take effect;

(g) The name and contact information of the fiduciary; and

(h) The name and contact information of a person that may be contacted for additional information.

NEW SECTION. **Sec.**  UNITRUST POLICY. (1) In administering a unitrust under this article, a fiduciary shall follow a unitrust policy adopted under section 2303(1) (a) or (b) of this act or amended or replaced under section 2303(1)(b) of this act.

(2) A unitrust policy must provide:

(a) The unitrust rate or the method for determining the unitrust rate under section 2306 of this act;

(b) The method for determining the applicable value under section 2307 of this act; and

(c) The rules described in sections 2306 through 2309 of this act, which apply in the administration of the unitrust, whether the rules are:

(i) Mandatory, as provided in sections 2307(1) and 2308(1) of this act; or

(ii) Optional, as provided in sections 2306, 2307(2), 2308(2), and 2309(1) of this act, to the extent the fiduciary elects to adopt those rules.

NEW SECTION. **Sec.**  UNITRUST RATE. (1) Except as otherwise provided in section 2309(2)(a) of this act, a unitrust rate may be:

(a) A fixed unitrust rate; or

(b) A unitrust rate that is determined for each period using:

(i) A market index or other published data; or

(ii) A mathematical blend of market indices or other published data over a stated number of preceding periods.

(2) Except as otherwise provided in section 2309(2)(a) of this act, a unitrust policy may provide:

(a) A limit on how high the unitrust rate determined under subsection (1)(b) of this section may rise;

(b) A limit on how low the unitrust rate determined under subsection (1)(b) of this section may fall;

(c) A limit on how much the unitrust rate determined under subsection (1)(b) of this section may increase over the unitrust rate for the preceding period or a mathematical blend of unitrust rates over a stated number of preceding periods;

(d) A limit on how much the unitrust rate determined under subsection (1)(b) of this section may decrease below the unitrust rate for the preceding period or a mathematical blend of unitrust rates over a stated number of preceding periods; or

(e) A mathematical blend of any of the unitrust rates determined under subsection (1)(b) of this section and (a) through (d) of this subsection.

NEW SECTION. **Sec.**  APPLICABLE VALUE. (1) A unitrust policy must provide the method for determining the fair market value of an asset for the purpose of determining the unitrust amount, including:

(a) The frequency of valuing the asset, which need not require a valuation in every period; and

(b) The date for valuing the asset in each period in which the asset is valued.

(2) Except as otherwise provided in section 2309(2)(b) of this act, a unitrust policy may provide methods for determining the amount of the net fair market value of the trust to take into account in determining the applicable value, including:

(a) Obtaining an appraisal of an asset for which fair market value is not readily available;

(b) Exclusion of specific assets or groups or types of assets;

(c) Other exceptions or modifications of the treatment of specific assets or groups or types of assets;

(d) Identification and treatment of cash or property held for distribution;

(e) Use of:

(i) An average of fair market values over a stated number of preceding periods; or

(ii) Another mathematical blend of fair market values over a stated number of preceding periods;

(f) A limit on how much the applicable value of all assets, groups of assets, or individual assets may increase over:

(i) The corresponding applicable value for the preceding period; or

(ii) A mathematical blend of applicable values over a stated number of preceding periods;

(g) A limit on how much the applicable value of all assets, groups of assets, or individual assets may decrease below:

(i) The corresponding applicable value for the preceding period; or

(ii) A mathematical blend of applicable values over a stated number of preceding periods;

(h) The treatment of accrued income and other features of an asset which affect value; and

(i) Determining the liabilities of the trust, including treatment of liabilities to conform with the treatment of assets under (a) through (h) of this subsection (2).

NEW SECTION. **Sec.**  PERIOD. (1) A unitrust policy must provide the period used under sections 2306 and 2307 of this act. Except as otherwise provided in section 2309(2)(c) of this act, the period may be:

(a) A calendar year;

(b) A 12-month period other than a calendar year;

(c) A calendar quarter;

(d) A three-month period other than a calendar quarter; or

(e) Another period.

(2) Except as otherwise provided in section 2309(2) of this act, a unitrust policy may provide standards for:

(a) Using fewer preceding periods under section 2306 (1)(b)(ii) or (2)(c) or (d) of this act if:

(i) The trust was not in existence in a preceding period; or

(ii) Market indices or other published data are not available for a preceding period;

(b) Using fewer preceding periods under section 2307(2) (e)(i) or (ii), (f)(ii), or (g)(ii) of this act if:

(i) The trust was not in existence in a preceding period; or

(ii) Fair market values are not available for a preceding period; and

(c) Prorating the unitrust amount on a daily basis for a part of a period in which the trust or the administration of the trust as a unitrust or the interest of any beneficiary commences or terminates.

NEW SECTION. **Sec.**  SPECIAL TAX BENEFITS—OTHER RULES. (1) A unitrust policy may:

(a) Provide methods and standards for:

(i) Determining the timing of distributions;

(ii) Making distributions in cash or in-kind or partly in cash and partly in-kind; or

(iii) Correcting an underpayment or overpayment to a beneficiary based on the unitrust amount if there is an error in calculating the unitrust amount;

(b) Specify sources and the order of sources, including categories of income for federal income tax purposes, from which distributions of a unitrust amount are paid; or

(c) Provide other standards and rules the fiduciary determines serve the interests of the beneficiaries.

(2) If a trust qualifies for a special tax benefit or a fiduciary is not an independent person:

(a) The unitrust rate established under section 2306 of this act may not be less than three percent or more than five percent;

(b) The only provisions of section 2307 of this act that apply are section 2307 (1) and (2)(a), (d), (e)(i), and (i) of this act;

(c) The only period that may be used under section 2308 of this act is a calendar year under section 2308(1)(a) of this act; and

(d) The only other provisions of section 2308 of this act that apply are section 2308(2) (b)(i) and (c) of this act.

**ARTICLE 4**

**ALLOCATION OF RECEIPTS**

**SUBARTICLE 1**

**RECEIPTS FROM ENTITY**

NEW SECTION. **Sec.**  CHARACTER OF RECEIPTS FROM ENTITY. (1) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Capital distribution" means an entity distribution of money that is a:

(i) Return of capital; or

(ii) Distribution in total or partial liquidation of the entity.

(b) "Entity":

(i) Means a corporation, partnership, limited liability company, regulated investment company, real estate investment trust, common trust fund, or any other organization or arrangement in which a fiduciary owns or holds an interest, whether or not the entity is a taxpayer for federal income tax purposes; and

(ii) Does not include:

(A) A trust or estate to which section 2402 of this act applies;

(B) A business or other activity to which section 2403 of this act applies, which is not conducted by an entity described in (b)(i) of this subsection (1);

(C) An asset-backed security; or

(D) An instrument or arrangement to which section 2416 of this act applies.

(c) "Entity distribution" means a payment or transfer by an entity made to a person in the person's capacity as an owner or holder of an interest in the entity.

(2) In this section, an attribute or action of an entity includes an attribute or action of any other entity in which the entity owns or holds an interest, including an interest owned or held indirectly through another entity.

(3) Except as otherwise provided in subsection (4)(b) through (d) of this section, a fiduciary shall allocate to income:

(a) Money received in an entity distribution; and

(b) Tangible personal property of nominal value received from the entity.

(4) A fiduciary shall allocate to principal:

(a) Property received in an entity distribution which is not:

(i) Money; or

(ii) Tangible personal property of nominal value;

(b) Money received in an entity distribution in an exchange for part or all of the fiduciary's interest in the entity, to the extent the entity distribution reduces the fiduciary's interest in the entity relative to the interests of other persons that own or hold interests in the entity;

(c) Money received in an entity distribution that the fiduciary determines or estimates is a capital distribution; and

(d) Money received in an entity distribution from an entity that is:

(i) A regulated investment company or real estate investment trust if the money received is a capital gain dividend for federal income tax purposes; or

(ii) Treated for federal income tax purposes comparably to the treatment described in (d)(i) of this subsection (4).

(5) A fiduciary may determine or estimate that money received in an entity distribution is a capital distribution:

(a) By relying without inquiry or investigation on a characterization of the entity distribution provided by or on behalf of the entity, unless the fiduciary:

(i) Determines, on the basis of information known to the fiduciary, that the characterization is or may be incorrect; or

(ii) Owns or holds more than 50 percent of the voting interest in the entity;

(b) By determining or estimating, on the basis of information known to the fiduciary or provided to the fiduciary by or on behalf of the entity, that the total amount of money and property received by the fiduciary in the entity distribution or a series of related entity distributions is or will be greater than 20 percent of the fair market value of the fiduciary's interest in the entity; or

(c) If neither (a) or (b) of this subsection (5) applies, by considering the factors in subsection (6) of this section and the information known to the fiduciary or provided to the fiduciary by or on behalf of the entity.

(6) In making a determination or estimate under subsection (5)(c) of this section, a fiduciary may consider:

(a) A characterization of an entity distribution provided by or on behalf of the entity;

(b) The amount of money or property received in:

(i) The entity distribution; or

(ii) What the fiduciary determines is or will be a series of related entity distributions;

(c) The amount described in (b) of this subsection compared to the amount the fiduciary determines or estimates is, during the current or preceding accounting periods:

(i) The entity's operating income;

(ii) The proceeds of the entity's sale or other disposition of:

(A) All or part of the business or other activity conducted by the entity;

(B) One or more business assets that are not sold to customers in the ordinary course of the business or other activity conducted by the entity; or

(C) One or more assets other than business assets, unless the entity's primary activity is to invest in assets to realize gain on the disposition of all or some of the assets;

(iii) If the entity's primary activity is to invest in assets to realize gain on the disposition of all or some of the assets, the gain realized on the disposition;

(iv) The entity's regular, periodic entity distributions;

(v) The amount of money the entity has accumulated;

(vi) The amount of money the entity has borrowed;

(vii) The amount of money the entity has received from the sources described in sections 2407, 2410, 2411, and 2412 of this act; and

(viii) The amount of money the entity has received from a source not otherwise described in this subsection; and

(d) Any other factor the fiduciary determines is relevant.

(7) If, after applying subsections (3) through (6) of this section, a fiduciary determines that a part of an entity distribution is a capital distribution but is in doubt about the amount of the entity distribution which is a capital distribution, the fiduciary shall allocate to principal the amount of the entity distribution which is in doubt.

(8) If a fiduciary receives additional information about the application of this section to an entity distribution before the fiduciary has paid part of the entity distribution to a beneficiary, the fiduciary may consider the additional information before making the payment to the beneficiary and may change a decision to make the payment to the beneficiary.

(9) If a fiduciary receives additional information about the application of this section to an entity distribution after the fiduciary has paid part of the entity distribution to a beneficiary, the fiduciary is not required to change or recover the payment to the beneficiary but may consider that information in determining whether to exercise the power to adjust under section 2203 of this act.

NEW SECTION. **Sec.**  DISTRIBUTION FROM TRUST OR ESTATE. A fiduciary shall allocate to income an amount received as a distribution of income, including a unitrust distribution under article 3 of this chapter, from a trust or estate in which the fiduciary has an interest, other than an interest the fiduciary purchased in a trust that is an investment entity, and shall allocate to principal an amount received as a distribution of principal from the trust or estate. If a fiduciary purchases, or receives from a settlor, an interest in a trust that is an investment entity, section 2401, 2415, or 2416 of this act applies to a receipt from the trust.

NEW SECTION. **Sec.**  BUSINESS OR OTHER ACTIVITY CONDUCTED BY FIDUCIARY. (1) This section applies to a business or other activity conducted by a fiduciary if the fiduciary determines that it is in the interests of the beneficiaries to account separately for the business or other activity instead of:

(a) Accounting for the business or other activity as part of the fiduciary's general accounting records; or

(b) Conducting the business or other activity through an entity described in section 2401(1)(b)(i) of this act.

(2) A fiduciary may account separately under this section for the transactions of a business or other activity, whether or not assets of the business or other activity are segregated from other assets held by the fiduciary.

(3) A fiduciary that accounts separately under this section for a business or other activity:

(a) May determine:

(i) The extent to which the net cash receipts of the business or other activity must be retained for:

(A) Working capital;

(B) The acquisition or replacement of fixed assets; and

(C) Other reasonably foreseeable needs of the business or other activity; and

(ii) The extent to which the remaining net cash receipts are accounted for as principal or income in the fiduciary's general accounting records for the trust;

(b) May make a determination under (a) of this subsection (3) separately and differently from the fiduciary's decisions concerning distributions of income or principal; and

(c) Shall account for the net amount received from the sale of an asset of the business or other activity, other than a sale in the ordinary course of the business or other activity, as principal in the fiduciary's general accounting records for the trust, to the extent the fiduciary determines that the net amount received is no longer required in the conduct of the business or other activity.

(4) Activities for which a fiduciary may account separately under this section include:

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

(b) Farming;

(c) Raising and selling livestock and other animals;

(d) Managing rental properties;

(e) Extracting minerals, water, and other natural resources;

(f) Growing and cutting timber;

(g) An activity to which section 2414, 2415, or 2416 of this act applies; and

(h) Any other business conducted by the fiduciary.

**SUBARTICLE 2**

**RECEIPTS NOT NORMALLY APPORTIONED**

NEW SECTION. **Sec.**  PRINCIPAL RECEIPTS. A fiduciary shall allocate to principal:

(1) To the extent not allocated to income under this chapter, an asset received from:

(a) An individual during the individual's lifetime;

(b) An estate;

(c) A trust on termination of an income interest; or

(d) A payor under a contract naming the fiduciary as beneficiary;

(2) Except as otherwise provided in this article, money or other property received from the sale, exchange, liquidation, or change in form of a principal asset;

(3) An amount recovered from a third party to reimburse the fiduciary because of a disbursement described in section 2502(1) of this act or for another reason to the extent not based on loss of income;

(4) Proceeds of property taken by eminent domain, except that proceeds awarded for loss of income in an accounting period are income if a current income beneficiary had a mandatory income interest during the period;

(5) Net income received in an accounting period during which there is no beneficiary to which a fiduciary may or must distribute income; and

(6) Other receipts as provided in sections 2408 through 2416 of this act.

NEW SECTION. **Sec.**  RENTAL PROPERTY. To the extent a fiduciary does not account for the management of rental property as a business under section 2403 of this act, the fiduciary shall allocate to income an amount received as rent of real or personal property, including an amount received for cancellation or renewal of a lease. An amount received as a refundable deposit, including a security deposit or a deposit that is to be applied as rent for future periods:

(1) Must be added to principal and held subject to the terms of the lease, except as otherwise provided by law other than this chapter; and

(2) Is not allocated to income or available for distribution to a beneficiary until the fiduciary's contractual obligations have been satisfied with respect to that amount.

NEW SECTION. **Sec.**  RECEIPT ON OBLIGATION TO BE PAID IN MONEY. (1) This section does not apply to an obligation to which section 2409, 2410, 2411, 2412, 2414, 2415, or 2416 of this act applies.

(2) A fiduciary shall allocate to income, without provision for amortization of premium, an amount received as interest on an obligation to pay money to the fiduciary, including an amount received as consideration for prepaying principal.

(3) A fiduciary shall allocate to principal an amount received from the sale, redemption, or other disposition of an obligation to pay money to the fiduciary. A fiduciary shall allocate to income the increment in value of a bond or other obligation for the payment of money bearing no stated interest but payable or redeemable, at maturity or another future time, in an amount that exceeds the amount in consideration of which it was issued.

NEW SECTION. **Sec.**  INSURANCE POLICY OR CONTRACT. (1) This section does not apply to a contract to which section 2409 of this act applies.

(2) Except as otherwise provided in subsection (3) of this section, a fiduciary shall allocate to principal the proceeds of a life insurance policy or other contract received by the fiduciary as beneficiary, including a contract that insures against damage to, destruction of, or loss of title to an asset. The fiduciary shall allocate dividends on an insurance policy to income to the extent premiums on the policy are paid from income and to principal to the extent premiums on the policy are paid from principal.

(3) A fiduciary shall allocate to income proceeds of a contract that insures the fiduciary against loss of:

(a) Occupancy or other use by a current income beneficiary;

(b) Income; or

(c) Subject to section 2403 of this act, profits from a business.

**SUBARTICLE 3**

**RECEIPTS NORMALLY APPORTIONED**

NEW SECTION. **Sec.**  INSUBSTANTIAL ALLOCATION NOT REQUIRED. (1) If a fiduciary determines that an allocation between income and principal required by section 2409, 2410, 2411, 2412, or 2415 of this act is insubstantial, the fiduciary may allocate the entire amount to principal, unless section 2203(5) of this act applies to the allocation.

(2) A fiduciary may presume an allocation is insubstantial under subsection (1) of this section if:

(a) The amount of the allocation would increase or decrease net income in an accounting period, as determined before the allocation, by less than 10 percent; and

(b) The asset producing the receipt to be allocated has a fair market value less than 10 percent of the total fair market value of the assets owned or held by the fiduciary at the beginning of the accounting period.

(3) The power to make a determination under subsection (1) of this section may be:

(a) Exercised by a cofiduciary in the manner described in section 2203(6) of this act; or

(b) Released or delegated for a reason described in section 2203(7) of this act and in the manner described in section 2203(8) of this act.

NEW SECTION. **Sec.**  DEFERRED COMPENSATION, ANNUITY, OR SIMILAR PAYMENT. (1) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Internal income of a separate fund" means the amount determined under subsection (2) of this section.

(b) "Marital trust" means a trust:

(i) Of which the settlor's surviving spouse is the only current income beneficiary and is entitled to a distribution of all the current net income of the trust; and

(ii) That qualifies for a marital deduction with respect to the settlor's estate under 26 U.S.C. Sec. 2056 of the federal internal revenue code of 1986, as amended, as of the effective date of this section, because:

(A) An election to qualify for a marital deduction under 26 U.S.C. Sec. 2056(b)(7) of the federal internal revenue code of 1986, as amended, as of the effective date of this section, has been made; or

(B) The trust qualifies for a marital deduction under 26 U.S.C. Sec. 2056(b)(5) of the federal internal revenue code of 1986, as amended, as of the effective date of this section.

(c) "Payment" means an amount a fiduciary may receive over a fixed number of years or during the life of one or more individuals because of services rendered or property transferred to the payor in exchange for future amounts the fiduciary may receive. The term includes an amount received in money or property from the payor's general assets or from a separate fund created by the payor.

(d) "Separate fund" includes a private or commercial annuity, an individual retirement account, and a pension, profit-sharing, stock bonus, or stock ownership plan.

(2) For each accounting period, the following rules apply to a separate fund:

(a) The fiduciary shall determine the internal income of the separate fund as if the separate fund were a trust subject to this chapter.

(b) If the fiduciary cannot determine the internal income of the separate fund under (a) of this subsection (2), the internal income of the separate fund is deemed to equal four percent of the value of the separate fund, according to the most recent statement of value preceding the beginning of the accounting period.

(c) If the fiduciary cannot determine the value of the separate fund under (b) of this subsection (2), the value of the separate fund is deemed to equal the present value of the expected future payments, as determined under 26 U.S.C. Sec. 7520 of the federal internal revenue code of 1986, as amended, as of the effective date of this section, for the month preceding the beginning of the accounting period for which the computation is made.

(3) A fiduciary shall allocate a payment received from a separate fund during an accounting period to income, to the extent of the internal income of the separate fund during the period, and the balance to principal.

(4) The fiduciary of a marital trust shall:

(a) Withdraw from a separate fund the amount the current income beneficiary of the trust requests the fiduciary to withdraw, not greater than the amount by which the internal income of the separate fund during the accounting period exceeds the amount the fiduciary otherwise receives from the separate fund during the period;

(b) Transfer from principal to income the amount the current income beneficiary requests the fiduciary to transfer, not greater than the amount by which the internal income of the separate fund during the period exceeds the amount the fiduciary receives from the separate fund during the period after the application of (a) of this subsection (2); and

(c) Distribute to the current income beneficiary as income:

(i) The amount of the internal income of the separate fund received or withdrawn during the period; and

(ii) The amount transferred from principal to income under (b) of this subsection (2).

(5) For a trust, other than a marital trust, of which one or more current income beneficiaries are entitled to a distribution of all the current net income, the fiduciary shall transfer from principal to income the amount by which the internal income of a separate fund during the accounting period exceeds the amount the fiduciary receives from the separate fund during the period.

NEW SECTION. **Sec.**  LIQUIDATING ASSET. (1) In this section, "liquidating asset" means an asset whose value will diminish or terminate because the asset is expected to produce receipts for a limited time. The term includes a leasehold, patent, copyright, royalty right, and right to receive payments during a period of more than one year under an arrangement that does not provide for the payment of interest on the unpaid balance.

(2) This section does not apply to a receipt subject to section 2401, 2409, 2411, 2412, 2414, 2415, 2416, or 2503 of this act.

(3) A fiduciary shall allocate to income 10 percent of the receipts from a liquidating asset and the balance to principal.

NEW SECTION. **Sec.**  MINERALS, WATER, AND OTHER NATURAL RESOURCES. (1) To the extent a fiduciary accounts for a receipt from an interest in minerals, water, or other natural resources pursuant to this section, the fiduciary shall allocate the receipt:

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

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

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

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

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

(3) This chapter applies whether or not a decedent or donor was extracting minerals, water, or other natural resources before the interest became subject to the trust.

(4) If a fiduciary owns or holds an interest in minerals, water, or other natural resources on January 1, 2022, the fiduciary may allocate receipts from the interest as provided in this chapter or in the manner used by the fiduciary before January 1, 2022. If the fiduciary acquires an interest in minerals, water, or other natural resources after January 1, 2022, the fiduciary shall allocate receipts from the interest as provided in this chapter.

NEW SECTION. **Sec.**  TIMBER. (1) To the extent a fiduciary does not account for receipts from the sale of timber and related products as a business under section 2403 of this act, the fiduciary shall allocate the net receipts:

(a) To income, to the extent the amount of timber cut from the land does not exceed the rate of growth of the timber;

(b) To principal, to the extent the amount of timber cut from the land exceeds the rate of growth of the timber or the net receipts are from the sale of standing timber;

(c) Between income and principal if the net receipts are from the lease of land used for growing and cutting timber or from a contract to cut timber from land, by determining the amount of timber cut from the land under the lease or contract and applying the rules in (a) or (b) of this subsection; or

(d) To principal, to the extent advance payments, bonuses, and other payments are not allocated under (a), (b), or (c) of this subsection.

(2) In determining net receipts to be allocated under subsection (1) of this section, a fiduciary shall deduct and transfer to principal a reasonable amount for depletion.

(3) This section applies to land owned or held by a fiduciary whether or not a settlor was cutting timber from the land before the fiduciary owned or held the property.

(4) If a fiduciary owns or holds an interest in land used for growing and cutting timber before the effective date of this section, the fiduciary may allocate net receipts from the sale of timber and related products as provided in this section or in the manner used by the fiduciary before the effective date of this section. If the fiduciary acquires an interest in land used for growing and cutting timber on or after the effective date of this section, the fiduciary shall allocate net receipts from the sale of timber and related products as provided in this section.

NEW SECTION. **Sec.**  MARITAL DEDUCTION PROPERTY NOT PRODUCTIVE OF INCOME. (1) If a trust received property for which a gift or estate tax marital deduction was allowed and the settlor's spouse holds a mandatory income interest in the trust, the spouse may require the trustee, to the extent the trust assets otherwise do not provide the spouse with sufficient income from or use of the trust assets to qualify for the deduction, to:

(a) Make property productive of income;

(b) Convert property to property productive of income within a reasonable time; or

(c) Exercise the power to adjust under section 2203 of this act.

(2) The trustee may decide which action or combination of actions in subsection (1) of this section to take.

NEW SECTION. **Sec.**  DERIVATIVE OR OPTION. (1) In this section, "derivative" means a contract, instrument, other arrangement, or combination of contracts, instruments, or other arrangements, the value, rights, and obligations of which are, in whole or in part, dependent on or derived from an underlying tangible or intangible asset, group of tangible or intangible assets, index, or occurrence of an event. The term includes stocks, fixed income securities, and financial instruments and arrangements based on indices, commodities, interest rates, weather-related events, and credit default events.

(2) To the extent a fiduciary does not account for a transaction in derivatives as a business under section 2403 of this act, the fiduciary shall allocate all receipts from the transaction and all disbursements made in connection with the transaction to principal.

(3) Subsection (4) of this section applies if:

(a) A fiduciary:

(i) Grants an option to buy property from a trust, whether or not the trust owns the property when the option is granted;

(ii) Grants an option that permits another person to sell property to the trust; or

(iii) Acquires an option to buy property for the trust or an option to sell an asset owned by the trust; and

(b) The fiduciary or other owner of the asset is required to deliver the asset if the option is exercised.

(4) If this subsection applies, the fiduciary shall allocate 10 percent to income and the balance to principal of the following amounts:

(a) An amount received for granting the option;

(b) An amount paid to acquire the option; and

(c) Gain or loss realized on the exercise, exchange, settlement, offset, closing, or expiration of the option.

NEW SECTION. **Sec.**  ASSET-BACKED SECURITY. (1) If a fiduciary receives a payment from interest or other current return and from other proceeds of the collateral financial assets, the fiduciary shall allocate to income the portion of the payment which the payer identifies as being from interest or other current return and shall allocate the balance of the payment to principal.

(2) If a fiduciary receives one or more payments in exchange for the fiduciary's entire interest in an asset-backed security in one accounting period, the fiduciary shall allocate the payments to principal. If a payment is one of a series of payments that will result in the liquidation of the trust's interest in the security over more than one accounting period, the fiduciary shall allocate 10 percent of the payment to income and the balance to principal.

NEW SECTION. **Sec.**  OTHER FINANCIAL INSTRUMENT OR ARRANGEMENT. A fiduciary shall allocate receipts from or related to a financial instrument or arrangement not otherwise addressed by this chapter. The allocation must be consistent with sections 2414 and 2415 of this act.

**ARTICLE 5**

**ALLOCATION OF DISBURSEMENTS**

NEW SECTION. **Sec.**  DISBURSEMENT FROM INCOME. Subject to section 2504 of this act, and except as otherwise provided in section 2601(3) (b) or (c) of this act, a fiduciary shall disburse from income:

(1) One-half of:

(a) The regular compensation of the fiduciary and any person providing investment advisory, custodial, or other services to the fiduciary, to the extent income is sufficient; and

(b) An expense for an accounting, judicial or nonjudicial proceeding, or other matter that involves both income and successive interests, to the extent income is sufficient;

(2) The balance of the disbursements described in subsection (1) of this section, to the extent a fiduciary that is an independent person determines that making those disbursements from income would be in the interests of the beneficiaries;

(3) Another ordinary expense incurred in connection with administration, management, or preservation of property and distribution of income, including interest, an ordinary repair, regularly recurring tax assessed against principal, and an expense of an accounting, judicial or nonjudicial proceeding, or other matter that involves primarily an income interest, to the extent income is sufficient; and

(4) A premium on insurance covering loss of a principal asset or income from or use of the asset.

NEW SECTION. **Sec.**  DISBURSEMENT FROM PRINCIPAL. (1) Subject to section 2505 of this act, and except as otherwise provided in section 2601(3)(b) of this act, a fiduciary shall disburse from principal:

(a) The balance of the disbursements described in section 2501 (1) and (3) of this act after application of section 2501(2) of this act;

(b) The fiduciary's compensation calculated on principal as a fee for acceptance, distribution, or termination;

(c) A payment of an expense to prepare for or execute a sale or other disposition of property;

(d) A payment on the principal of a trust debt;

(e) A payment of an expense of an accounting, judicial or nonjudicial proceeding, or other matter that involves primarily principal, including a proceeding to construe the terms of the trust or protect property;

(f) A payment of a premium for insurance, including title insurance, not described in section 2501(4) of this act, of which the fiduciary is the owner and beneficiary;

(g) A payment of an estate or inheritance tax or other tax imposed because of the death of a decedent, including penalties, apportioned to the trust; and

(h) A payment:

(i) Related to environmental matters, including:

(A) Reclamation;

(B) Assessing environmental conditions;

(C) Remedying and removing environmental contamination;

(D) Monitoring remedial activities and the release of substances;

(E) Preventing future releases of substances;

(F) Collecting amounts from persons liable or potentially liable for the costs of activities described in (h)(i)(A) through (E) of this subsection (1);

(G) Penalties imposed under environmental laws or regulations;

(H) Other actions to comply with environmental laws or regulations;

(I) Statutory or common law claims by third parties; and

(J) Defending claims based on environmental matters; and

(ii) For a premium for insurance for matters described in (h)(i) of this subsection (1).

(2) If a principal asset is encumbered with an obligation that requires income from the asset to be paid directly to a creditor, the fiduciary shall transfer from principal to income an amount equal to the income paid to the creditor in reduction of the principal balance of the obligation.

NEW SECTION. **Sec.**  TRANSFER FROM INCOME TO PRINCIPAL FOR DEPRECIATION. (1) In this section, "depreciation" means a reduction in value due to wear, tear, decay, corrosion, or gradual obsolescence of a tangible asset having a useful life of more than one year.

(2) A fiduciary may transfer to principal a reasonable amount of the net cash receipts from a principal asset that is subject to depreciation, but may not transfer any amount for depreciation:

(a) Of the part of real property used or available for use by a beneficiary as a residence;

(b) Of tangible personal property held or made available for the personal use or enjoyment of a beneficiary; or

(c) Under this section, to the extent the fiduciary accounts:

(i) Under section 2410 of this act for the asset; or

(ii) Under section 2403 of this act for the business or other activity in which the asset is used.

(3) An amount transferred to principal under this section need not be separately held.

NEW SECTION. **Sec.**  REIMBURSEMENT OF INCOME FROM PRINCIPAL. (1) If a fiduciary makes or expects to make an income disbursement described in subsection (2) of this section, the fiduciary may transfer an appropriate amount from principal to income in one or more accounting periods to reimburse income.

(2) To the extent the fiduciary has not been and does not expect to be reimbursed by a third party, income disbursements to which subsection (1) of this section applies include:

(a) An amount chargeable to principal but paid from income because principal is illiquid;

(b) A disbursement made to prepare property for sale, including improvements and commissions; and

(c) A disbursement described in section 2502(1) of this act.

(3) If an asset whose ownership gives rise to an income disbursement becomes subject to a successive interest after an income interest ends, the fiduciary may continue to make transfers under subsection (1) of this section.

NEW SECTION. **Sec.**  REIMBURSEMENT OF PRINCIPAL FROM INCOME. (1) If a fiduciary makes or expects to make a principal disbursement described in subsection (2) of this section, the fiduciary may transfer an appropriate amount from income to principal in one or more accounting periods to reimburse principal or provide a reserve for future principal disbursements.

(2) To the extent a fiduciary has not been and does not expect to be reimbursed by a third party, principal disbursements to which subsection (1) of this section applies include:

(a) An amount chargeable to income but paid from principal because income is not sufficient;

(b) The cost of an improvement to principal, whether a change to an existing asset or the construction of a new asset, including a special assessment;

(c) A disbursement made to prepare property for rental, including tenant allowances, leasehold improvements, and commissions;

(d) A periodic payment on an obligation secured by a principal asset, to the extent the amount transferred from income to principal for depreciation is less than the periodic payment; and

(e) A disbursement described in section 2502(1) of this act.

(3) If an asset whose ownership gives rise to a principal disbursement becomes subject to a successive interest after an income interest ends, the fiduciary may continue to make transfers under subsection (1) of this section.

NEW SECTION. **Sec.**  INCOME TAXES. (1) A tax required to be paid by a fiduciary based on receipts allocated to income must be charged to income.

(2) A tax required to be paid by a fiduciary based on receipts allocated to principal must be charged to principal, even if the tax is called an income tax by the taxing authority.

(3) A tax required to be paid by a fiduciary on a share of an entity's taxable income must be charged:

(a) To income to the extent that receipts from the entity are allocated only to income;

(b) To principal to the extent that receipts from the entity are allocated only to principal;

(c) Proportionately to income and principal to the extent that receipts from the entity are allocated to both income and principal.

(4) Before applying subsections (1) through (3) of this section, the trustee must adjust income or principal receipts by the distributions to a beneficiary for which the trust receives an income tax deduction.

NEW SECTION. **Sec.**  ADJUSTMENT BETWEEN INCOME AND PRINCIPAL BECAUSE OF TAXES. (1) A fiduciary may make an adjustment between income and principal to offset the shifting of economic interests or tax benefits between current income beneficiaries and successor beneficiaries which arises from:

(a) An election or decision the fiduciary makes regarding a tax matter, other than a decision to claim an income tax deduction to which subsection (2) of this section applies;

(b) An income tax or other tax imposed on the fiduciary or a beneficiary as a result of a transaction involving the fiduciary or a distribution by the fiduciary; or

(c) Ownership by the fiduciary of an interest in an entity a part of whose taxable income, whether or not distributed, is includable in the taxable income of the fiduciary or a beneficiary.

(2) If the amount of an estate tax marital or charitable deduction is reduced because a fiduciary deducts an amount paid from principal for income tax purposes instead of deducting it for estate tax purposes and, as a result, estate taxes paid from principal are increased and income taxes paid by the fiduciary or a beneficiary are decreased, the fiduciary shall charge each beneficiary that benefits from the decrease in income tax to reimburse the principal from which the increase in estate tax is paid. The total reimbursement must equal the increase in the estate tax, to the extent the principal used to pay the increase would have qualified for a marital or charitable deduction but for the payment. The share of the reimbursement for each fiduciary or beneficiary whose income taxes are reduced must be the same as its share of the total decrease in income tax.

(3) A fiduciary that charges a beneficiary under subsection (2) of this section may offset the charge by obtaining payment from the beneficiary, withholding an amount from future distributions to the beneficiary, or adopting another method or combination of methods.

**ARTICLE 6**

**DEATH OF INDIVIDUAL OR TERMINATION OF INCOME INTEREST**

NEW SECTION. **Sec.**  DETERMINATION AND DISTRIBUTION OF NET INCOME. (1) This section applies when:

(a) The death of an individual results in the creation of an estate or trust; or

(b) An income interest in a trust terminates, whether the trust continues or is distributed.

(2) A fiduciary of an estate or trust with an income interest that terminates shall determine, under subsection (7) of this section and articles 4, 5, and 7 of this chapter, the amount of net income and net principal receipts received from property specifically given to a beneficiary. The fiduciary shall distribute the net income and net principal receipts to the beneficiary that is to receive the specific property.

(3) A fiduciary shall determine the income and net income of an estate or income interest in a trust which terminates, other than the amount of net income determined under subsection (2) of this section, under articles 4, 5, and 7 of this chapter and by:

(a) Including in net income all income from property used or sold to discharge liabilities;

(b) Paying from income or principal, in the fiduciary's discretion, fees of attorneys, accountants, and fiduciaries, court costs and other expenses of administration, and interest on estate and inheritance taxes and other taxes imposed because of the decedent's death, but the fiduciary may pay the expenses from income of property passing to a trust for which the fiduciary claims a federal estate tax marital or charitable deduction only to the extent:

(i) The payment of the expenses from income will not cause the reduction or loss of the deduction; or

(ii) The fiduciary makes an adjustment under section 2507(2) of this act; and

(c) Paying from principal other disbursements made or incurred in connection with the settlement of the estate or the winding up of an income interest that terminates, including:

(i) To the extent authorized by the decedent's will, the terms of the trust, or applicable law, debts, funeral expenses, disposition of remains, family allowances, estate and inheritance taxes, and other taxes imposed because of the decedent's death; and

(ii) Related penalties that are apportioned, by the decedent's will, the terms of the trust, or applicable law, to the estate or income interest that terminates.

(4) If a decedent's will, the terms of a trust, or applicable law provides for the payment of interest or the equivalent of interest to a beneficiary that receives a pecuniary amount outright, the fiduciary shall make the payment from net income determined under subsection (3) of this section or from principal to the extent net income is insufficient.

(5) If a beneficiary is to receive a pecuniary amount outright from a trust after an income interest ends because of an income beneficiary's death, and no payment of interest or the equivalent of interest is provided for by the terms of the trust or applicable law, the fiduciary shall pay the interest or the equivalent of interest to which the beneficiary would be entitled under applicable law if the pecuniary amount were required to be paid under a will.

(6) A fiduciary shall distribute net income remaining after payments required by subsections (4) and (5) of this section in the manner described in section 2602 of this act to all other beneficiaries, including a beneficiary that receives a pecuniary amount in trust, even if the beneficiary holds an unqualified power to withdraw assets from the trust or other presently exercisable general power of appointment over the trust.

(7) A fiduciary may not reduce principal or income receipts from property described in subsection (2) of this section because of a payment described in section 2501 or 2502 of this act, to the extent the decedent's will, the terms of the trust, or applicable law requires the fiduciary to make the payment from assets other than the property or to the extent the fiduciary recovers or expects to recover the payment from a third party. The net income and principal receipts from the property must be determined by including the amount the fiduciary receives or pays regarding the property, whether the amount accrued or became due before, on, or after the date of the decedent's death or an income interest's terminating event, and making a reasonable provision for an amount the estate or income interest may become obligated to pay after the property is distributed.

NEW SECTION. **Sec.**  DISTRIBUTION TO SUCCESSOR BENEFICIARY. (1) Except to the extent article 3 of this chapter applies for a beneficiary that is a trust, each beneficiary described in section 2601(6) of this act is entitled to receive a share of the net income equal to the beneficiary's fractional interest in undistributed principal assets, using values as of the distribution date. If a fiduciary makes more than one distribution of assets to beneficiaries to which this section applies, each beneficiary, including a beneficiary that does not receive part of the distribution, is entitled, as of each distribution date, to a share of the net income the fiduciary received after the decedent's death, an income interest's other terminating event, or the preceding distribution by the fiduciary.

(2) In determining a beneficiary's share of net income under subsection (1) of this section, the following rules apply:

(a) The beneficiary is entitled to receive a share of the net income equal to the beneficiary's fractional interest in the undistributed principal assets immediately before the distribution date.

(b) The beneficiary's fractional interest under (a) of this subsection must be calculated:

(i) On the aggregate value of the assets as of the distribution date without reducing the value by any unpaid principal obligation; and

(ii) Without regard to:

(A) Property specifically given to a beneficiary under the decedent's will or the terms of the trust; and

(B) Property required to pay pecuniary amounts not in trust.

(c) The distribution date under (a) of this subsection may be the date as of which the fiduciary calculates the value of the assets if that date is reasonably near the date on which the assets are distributed.

(3) To the extent a fiduciary does not distribute under this section all the collected but undistributed net income to each beneficiary as of a distribution date, the fiduciary shall maintain records showing the interest of each beneficiary in the net income.

(4) If this section applies to income from an asset, a fiduciary may apply the rules in this section to net gain or loss realized from the disposition of the asset after the decedent's death, an income interest's terminating event, or the preceding distribution by the fiduciary.

**ARTICLE 7**

**APPORTIONMENT AT BEGINNING AND END OF INCOME INTEREST**

NEW SECTION. **Sec.**  WHEN RIGHT TO INCOME BEGINS AND ENDS. (1) An income beneficiary is entitled to net income in accordance with the terms of the trust from the date an income interest begins. The income interest begins on the date specified in the terms of the trust or, if no date is specified, on the date an asset becomes subject to:

(a) The trust for the current income beneficiary; or

(b) A successive interest for a successor beneficiary.

(2) An asset becomes subject to a trust under subsection (1)(a) of this section:

(a) For an asset that is transferred to the trust during the settlor's life, on the date the asset is transferred;

(b) For an asset that becomes subject to the trust because of a decedent's death, on the date of the decedent's death, even if there is an intervening period of administration of the decedent's estate; or

(c) For an asset that is transferred to a fiduciary by a third party because of a decedent's death, on the date of the decedent's death.

(3) An asset becomes subject to a successive interest under subsection (1)(b) of this section on the day after the preceding income interest ends, as determined under subsection (4) of this section, even if there is an intervening period of administration to wind up the preceding income interest.

(4) An income interest ends on the day before an income beneficiary dies or another terminating event occurs or on the last day of a period during which there is no beneficiary to which a fiduciary may or must distribute income.

NEW SECTION. **Sec.**  APPORTIONMENT OF RECEIPTS AND DISBURSEMENTS WHEN DECEDENT DIES OR INCOME INTEREST BEGINS. (1) A fiduciary shall allocate an income receipt or disbursement, other than a receipt to which section 2601(2) of this act applies, to principal if its due date occurs before the date on which:

(a) For an estate, the decedent died; or

(b) For a trust or successive interest, an income interest begins.

(2) If the due date of a periodic income receipt or disbursement occurs on or after the date on which a decedent died or an income interest begins, a fiduciary shall allocate the receipt or disbursement to income.

(3) If an income receipt or disbursement is not periodic or has no due date, a fiduciary shall treat the receipt or disbursement under this section as accruing from day to day. The fiduciary shall allocate to principal the portion of the receipt or disbursement accruing before the date on which a decedent died or an income interest begins, and to income the balance.

(4) A receipt or disbursement is periodic under subsections (2) and (3) of this section if:

(a) The receipt or disbursement must be paid at regular intervals under an obligation to make payments; or

(b) The payor customarily makes payments at regular intervals.

(5) An item of income or obligation is due under this section on the date the payor is required to make a payment. If a payment date is not stated, there is no due date.

(6) Distributions to shareholders or other owners from an entity to which section 2401 of this act applies are due:

(a) On the date fixed by or on behalf of the entity for determining the persons entitled to receive the distribution;

(b) If no date is fixed, on the date of the decision by or on behalf of the entity to make the distribution; or

(c) If no date is fixed and the fiduciary does not know the date of the decision by or on behalf of the entity to make the distribution, on the date the fiduciary learns of the decision.

NEW SECTION. **Sec.**  APPORTIONMENT WHEN INCOME INTEREST ENDS. (1) In this section, "undistributed income" means net income received on or before the date on which an income interest ends. The term does not include an item of income or expense which is due or accrued or net income that has been added or is required to be added to principal under the terms of the trust.

(2) Except as otherwise provided in subsection (3) of this section, when a mandatory income interest of a beneficiary ends, the fiduciary shall pay the beneficiary's share of the undistributed income that is not disposed of under the terms of the trust to the beneficiary or, if the beneficiary does not survive the date the interest ends, to the beneficiary's estate.

(3) If a beneficiary has an unqualified power to withdraw more than five percent of the value of a trust immediately before an income interest ends:

(a) The fiduciary shall allocate to principal the undistributed income from the portion of the trust which may be withdrawn; and

(b) Subsection (2) of this section applies only to the balance of the undistributed income.

(4) When a fiduciary's obligation to pay a fixed annuity or a fixed fraction of the value of assets ends, the fiduciary shall prorate the final payment as required to preserve an income tax, gift tax, estate tax, or other tax benefit.

**ARTICLE 8**

**MISCELLANEOUS PROVISIONS**

NEW SECTION. **Sec.**  UNIFORMITY OF APPLICATION AND CONSTRUCTION. (1) In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

(2) To the extent that this chapter is in conflict with RCW 11.68.090, RCW 11.68.090 prevails.

NEW SECTION. **Sec.**  RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This chapter modifies, limits, or supersedes the electronic signatures in global and national commerce act, 15 U.S.C. Sec. 7001 et seq., but does not modify, limit, or supersede section 101(c) of that act (15 U.S.C. Sec. 7001(c)) or authorize electronic delivery of any of the notices described in section 103(b) of that act (15 U.S.C. Sec. 7003(b)).

NEW SECTION. **Sec.**  APPLICATION TO TRUST OR ESTATE. This chapter applies to a trust or estate existing or created on or after the effective date of this section, except as otherwise expressly provided in the terms of the trust or sections 2101 through 2802 of this act.

**Sec.**  RCW 30B.24.005 and 2019 c 389 s 41 are each amended to read as follows:

(1) Except to the extent federal preemption of state law is applicable in relation to trusts governed under the federal employment retirement income security act, a state trust company shall comply with all applicable provisions of this title and with applicable provisions of Title 11 RCW including, without limitation, chapters 11.97, 11.98, 11.98A, 11.100, 11.102, ((~~11.104A~~)) 11.--- (the new chapter created in section 2808 of this act), 11.106, 11.107, and 11.108 RCW, and with chapter 11.110 RCW, in the case of a charitable trust.

(2) The director has broad administrative authority to establish by rule or interpretation principles-based standards for examination, supervision, and enforcement of a state trust company by the department in relation to compliance with this title, including subsection (1) of this section.

(3) A state bank, in relation to its trust department and its exercise of trust powers, shall comply with:

(a) Title 30A RCW, if a state commercial bank, and Title 32 RCW, if a state savings bank;

(b) The applicable provisions of Title 11 RCW including, without limitation, chapters 11.97, 11.98, 11.98A, 11.100, 11.102, ((~~11.104A~~)) 11.--- (the new chapter created in section 2808 of this act), 11.106, 11.107, and 11.108 RCW, and with chapter 11.110 RCW, in the case of a charitable trust;

(c) If the state bank is federally insured, any applicable rules and guidance of the federal deposit insurance corporation or other applicable federal law or regulation related to such state bank's exercise of trust powers; and

(d) If the state bank is a member of the federal reserve system, any rules and guidance of the board of governors of the federal reserve system related to such state bank's exercise of trust powers.

NEW SECTION. **Sec.**  RECODIFICATIONS. RCW 11.104A.901 and 11.104A.907 are each recodified as sections in chapter 11.--- RCW (the new chapter created in section 2808 of this act).

NEW SECTION. **Sec.**  REPEALERS. The following acts or parts of acts are each repealed:

(1)RCW 11.104A.001 (Short title) and 2002 c 345 s 101;

(2)RCW 11.104A.005 (Definitions) and 2002 c 345 s 102;

(3)RCW 11.104A.010 (Fiduciary duties—General principles) and 2002 c 345 s 103;

(4)RCW 11.104A.020 (Fiduciary's power to adjust) and 2002 c 345 s 104;

(5)RCW 11.104A.030 (Judicial control of discretionary powers) and 2002 c 345 s 105;

(6)RCW 11.104A.040 (Power to convert to unitrust) and 2006 c 360 s 1 & 2002 c 345 s 106;

(7)RCW 11.104A.050 (Determination and distribution of net income) and 2006 c 360 s 2 & 2002 c 345 s 201;

(8)RCW 11.104A.060 (Distribution to residuary and remainder beneficiaries) and 2002 c 345 s 202;

(9)RCW 11.104A.070 (When right to income begins and ends) and 2002 c 345 s 301;

(10)RCW 11.104A.080 (Apportionment of receipts and disbursements when decedent dies or income interest begins) and 2002 c 345 s 302;

(11)RCW 11.104A.090 (Apportionment when income interest ends) and 2002 c 345 s 303;

(12)RCW 11.104A.100 (Character of receipts) and 2002 c 345 s 401;

(13)RCW 11.104A.110 (Distribution from trust or estate) and 2002 c 345 s 402;

(14)RCW 11.104A.120 (Business and other activities conducted by trustee) and 2002 c 345 s 403;

(15)RCW 11.104A.130 (Principal receipts) and 2002 c 345 s 404;

(16)RCW 11.104A.140 (Rental property) and 2002 c 345 s 405;

(17)RCW 11.104A.150 (Obligation to pay money) and 2002 c 345 s 406;

(18)RCW 11.104A.160 (Insurance policies and similar contracts) and 2002 c 345 s 407;

(19)RCW 11.104A.170 (Insubstantial allocations not required) and 2002 c 345 s 408;

(20)RCW 11.104A.180 (Deferred compensation, annuities, and similar payments) and 2009 c 365 s 1 & 2002 c 345 s 409;

(21)RCW 11.104A.190 (Liquidating asset) and 2002 c 345 s 410;

(22)RCW 11.104A.200 (Minerals, water, and other natural resources) and 2002 c 345 s 411;

(23)RCW 11.104A.210 (Timber) and 2002 c 345 s 412;

(24)RCW 11.104A.220 (Property not productive of income) and 2002 c 345 s 413;

(25)RCW 11.104A.230 (Derivatives and options) and 2002 c 345 s 414;

(26)RCW 11.104A.240 (Asset-backed securities) and 2002 c 345 s 415;

(27)RCW 11.104A.250 (Disbursements from income) and 2002 c 345 s 501;

(28)RCW 11.104A.260 (Disbursements from principal) and 2002 c 345 s 502;

(29)RCW 11.104A.270 (Transfers from income to principal for depreciation) and 2002 c 345 s 503;

(30)RCW 11.104A.280 (Transfers from income to reimburse principal) and 2002 c 345 s 504;

(31)RCW 11.104A.290 (Income taxes) and 2011 c 33 s 1 & 2002 c 345 s 505;

(32)RCW 11.104A.300 (Adjustments between principal and income because of taxes) and 2002 c 345 s 506;

(33)RCW 11.104A.900 (Uniformity of application and construction) and 2021 c . . . s 4025 (section 4025 of this act) & 2002 c 345 s 602;

(34)RCW 11.104A.904 (Effective date—2002 c 345) and 2002 c 345 s 606;

(35)RCW 11.104A.905 (Application of act to existing trusts and estates) and 2002 c 345 s 607; and

(36)RCW 11.104A.906 (Transitional matters) and 2009 c 365 s 2.

NEW SECTION. **Sec.**  SEVERABILITY. If any provision of sections 2101 through 2806 of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. **Sec.**  CODIFICATION. Sections 2101 through 2803 and 2809 of this act constitute a new chapter in Title 11 RCW.

NEW SECTION. **Sec.**  EFFECTIVE DATE. Sections 2101 through 2806 of this act take effect January 1, 2022.

**PART III**

**UNIFORM POWERS OF APPOINTMENT ACT**

**ARTICLE 1**

**GENERAL PROVISIONS**

NEW SECTION. **Sec.**  SHORT TITLE. This chapter may be known and cited as the uniform powers of appointment act.

NEW SECTION. **Sec.**  DEFINITIONS. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Appointee" means a person to which a powerholder makes an appointment of appointive property.

(2) "Appointive property" means the property or property interest subject to a power of appointment.

(3) "Blanket-exercise clause" means a clause in an instrument which exercises a power of appointment and is not a specific-exercise clause. The term includes a clause that:

(a) Expressly uses the words "any power" in exercising any power of appointment the powerholder has;

(b) Expressly uses the words "any property" in appointing any property over which the powerholder has a power of appointment; or

(c) Disposes of all property subject to disposition by the powerholder.

(4) "Donor" means a person that creates a power of appointment.

(5) "Exclusionary power of appointment" means a power of appointment exercisable in favor of any one or more of the permissible appointees to the exclusion of the other permissible appointees.

(6) "General power of appointment" means a power of appointment exercisable in favor of the powerholder, the powerholder's estate, a creditor of the powerholder, or a creditor of the powerholder's estate.

(7) "Gift-in-default clause" means a clause identifying a taker in default of appointment.

(8) "Impermissible appointee" means a person that is not a permissible appointee.

(9) "Instrument" means a record.

(10) "Nongeneral power of appointment" means a power of appointment that is not a general power of appointment.

(11) "Permissible appointee" means a person in whose favor a powerholder may exercise a power of appointment.

(12) "Person" means an individual, estate, trust, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or other legal entity.

(13) "Power of appointment" means a power that enables a powerholder acting in a nonfiduciary capacity to designate a recipient of an ownership interest in or another power of appointment over the appointive property. The term does not include a power of attorney.

(14) "Powerholder" means a person in which a donor creates a power of appointment.

(15) "Presently exercisable power of appointment" means a power of appointment exercisable by the powerholder at the relevant time. The term:

(a) Includes a power of appointment not exercisable until the occurrence of a specified event, the satisfaction of an ascertainable standard, or the passage of a specified time only after:

(i) The occurrence of the specified event;

(ii) The satisfaction of the ascertainable standard; or

(iii) The passage of the specified time; and

(b) Does not include a power exercisable only at the powerholder's death.

(16) "Specific-exercise clause" means a clause in an instrument which specifically refers to and exercises a particular power of appointment.

(17) "Taker in default of appointment" means a person that takes all or part of the appointive property to the extent the powerholder does not effectively exercise the power of appointment.

(18) "Terms of the instrument" means the manifestation of the intent of the maker of the instrument regarding the instrument's provisions as expressed in the instrument or as may be established by other evidence that would be admissible in a legal proceeding.

NEW SECTION. **Sec.**  GOVERNING LAW. Unless the terms of the instrument creating a power of appointment manifest a contrary intent:

(1) The creation, revocation, or amendment of the power is governed by the law of the donor's domicile at the time the action is taken; and

(2) The exercise, release, lapse, or disclaimer of the power, or the revocation or amendment of the exercise, release, lapse, or disclaimer of the power, is governed by the law of the powerholder's domicile at the time the action is taken.

NEW SECTION. **Sec.**  COMMON LAW AND PRINCIPLES OF EQUITY. The common law and principles of equity supplement this chapter, except to the extent modified by this chapter or law of this state other than this chapter.

**ARTICLE 2**

**CREATION, REVOCATION, AND AMENDMENT OF POWER OF APPOINTMENT**

NEW SECTION. **Sec.**  CREATION OF POWER OF APPOINTMENT. (1) A power of appointment is created only if:

(a) The instrument creating the power:

(i) Is valid under applicable law; and

(ii) Except as otherwise provided in subsection (2) of this section, transfers the appointive property; and

(b) The terms of the instrument creating the power manifest the donor's intent to create in a powerholder a power of appointment over the appointive property exercisable in favor of a permissible appointee.

(2) Subsection (1)(a)(ii) of this section does not apply to the creation of a power of appointment by the exercise of a power of appointment.

(3) A power of appointment may not be created in a deceased individual.

(4) Subject to an applicable rule against perpetuities, a power of appointment may be created in an unborn or unascertained powerholder.

NEW SECTION. **Sec.**  NONTRANSFERABILITY. A powerholder may not transfer a power of appointment. If a powerholder dies without exercising or releasing a power, the power lapses.

NEW SECTION. **Sec.**  PRESUMPTION OF UNLIMITED AUTHORITY. Subject to section 3205 of this act and RCW 11.95.100 (as recodified by this act) through 11.95.150 (as recodified by this act), and unless the terms of the instrument creating a power of appointment manifest a contrary intent, the power is:

(1) Presently exercisable;

(2) Exclusionary; and

(3) Except as otherwise provided in section 3204 of this act, general.

NEW SECTION. **Sec.**  EXCEPTION TO PRESUMPTION OF UNLIMITED AUTHORITY. Unless the terms of the instrument creating a power of appointment manifest a contrary intent, the power is nongeneral if:

(1) The power is exercisable only at the powerholder's death; and

(2) The permissible appointees of the power are a defined and limited class that does not include the powerholder's estate, the powerholder's creditors, or the creditors of the powerholder's estate.

NEW SECTION. **Sec.**  RULES OF CLASSIFICATION. (1) In this section, "adverse party" means a person with a substantial beneficial interest in property which would be affected adversely by a powerholder's exercise or nonexercise of a power of appointment in favor of the powerholder, the powerholder's estate, a creditor of the powerholder, or a creditor of the powerholder's estate.

(2) If a powerholder may exercise a power of appointment only with the consent or joinder of an adverse party, the power is nongeneral.

(3) If the permissible appointees of a power of appointment are not defined and limited, the power is exclusionary.

NEW SECTION. **Sec.**  POWER TO REVOKE OR AMEND. A donor may revoke or amend a power of appointment only to the extent that:

(1) The instrument creating the power is revocable by the donor; or

(2) The donor reserves a power of revocation or amendment in the instrument creating the power of appointment.

**ARTICLE 3**

**EXERCISE OF POWER OF APPOINTMENT**

NEW SECTION. **Sec.**  REQUISITES FOR EXERCISE OF POWER OF APPOINTMENT. A power of appointment is exercised only:

(1) If the instrument exercising the power is valid under applicable law;

(2) If the terms of the instrument exercising the power:

(a) Manifest the powerholder's intent to exercise the power; and

(b) Subject to section 3304 of this act, satisfy the requirements of exercise, if any, imposed by the donor; and

(3) To the extent the appointment is a permissible exercise of the power.

NEW SECTION. **Sec.**  INTENT TO EXERCISE—DETERMINING INTENT FROM RESIDUARY CLAUSE. (1) In this section:

(a) "Residuary clause" does not include a residuary clause containing a blanket-exercise clause or a specific-exercise clause.

(b) "Will" includes a codicil and a testamentary instrument that revises another will.

(2) A residuary clause in a powerholder's will, or a comparable clause in the powerholder's revocable trust, manifests the powerholder's intent to exercise a power of appointment only if:

(a) The terms of the instrument containing the residuary clause do not manifest a contrary intent;

(b) The power is a general power exercisable in favor of the powerholder's estate;

(c) There is no gift-in-default clause or the clause is ineffective; and

(d) The powerholder did not release the power.

NEW SECTION. **Sec.**  INTENT TO EXERCISE—AFTER-ACQUIRED POWER. Unless the terms of the instrument exercising a power of appointment manifest a contrary intent:

(1) Except as otherwise provided in subsection (2) of this section, a blanket-exercise clause extends to a power acquired by the powerholder after executing the instrument containing the clause; and

(2) If the powerholder is also the donor of the power, the clause does not extend to the power unless there is no gift-in-default clause or the gift-in-default clause is ineffective.

NEW SECTION. **Sec.**  SUBSTANTIAL COMPLIANCE WITH DONOR-IMPOSED FORMAL REQUIREMENT. A powerholder's substantial compliance with a formal requirement of appointment imposed by the donor, including a requirement that the instrument exercising the power of appointment make reference or specific reference to the power, is sufficient if:

(1) The powerholder knows of and intends to exercise the power; and

(2) The powerholder's manner of attempted exercise of the power does not impair a material purpose of the donor in imposing the requirement.

NEW SECTION. **Sec.**  PERMISSIBLE APPOINTMENT. (1) A powerholder of a general power of appointment that permits appointment to the powerholder or the powerholder's estate may make any appointment, including an appointment in trust or creating a new power of appointment, that the powerholder could make in disposing of the powerholder's own property.

(2) A powerholder of a general power of appointment that permits appointment only to the creditors of the powerholder or of the powerholder's estate may appoint only to those creditors.

(3) Unless the terms of the instrument creating a power of appointment manifest a contrary intent, the powerholder of a nongeneral power may:

(a) Make an appointment in any form, including an appointment in trust, in favor of a permissible appointee;

(b) Create a general power in a permissible appointee;

(c) Create a nongeneral power in any person to appoint to one or more of the permissible appointees of the original nongeneral power; or

(d) Create a nongeneral power in a permissible appointee to appoint to one or more persons if the permissible appointees of the new nongeneral power include the permissible appointees of the original nongeneral power.

NEW SECTION. **Sec.**  APPOINTMENT TO DECEASED APPOINTEE OR PERMISSIBLE APPOINTEE'S DESCENDANT. (1) Subject to RCW 11.12.110 and 11.12.120, an appointment to a deceased appointee is ineffective.

(2) Unless the terms of the instrument creating a power of appointment manifest a contrary intent, a powerholder of a nongeneral power may exercise the power in favor of, or create a new power of appointment in, a descendant of a deceased permissible appointee whether or not the descendant is described by the donor as a permissible appointee.

NEW SECTION. **Sec.**  IMPERMISSIBLE APPOINTMENT. (1) Except as otherwise provided in section 3306 of this act, an exercise of a power of appointment in favor of an impermissible appointee is ineffective.

(2) An exercise of a power of appointment in favor of a permissible appointee is ineffective to the extent the appointment is a fraud on the power.

NEW SECTION. **Sec.**  SELECTIVE ALLOCATION DOCTRINE. If a powerholder exercises a power of appointment in a disposition that also disposes of property the powerholder owns, the owned property and the appointive property must be allocated in the permissible manner that best carries out the powerholder's intent.

NEW SECTION. **Sec.**  CAPTURE DOCTRINE—DISPOSITION OF INEFFECTIVELY APPOINTED PROPERTY UNDER GENERAL POWER. To the extent a powerholder of a general power of appointment, other than a power to withdraw property from, revoke, or amend a trust, makes an ineffective appointment:

(1) The gift-in-default clause controls the disposition of the ineffectively appointed property; or

(2) If there is no gift-in-default clause or to the extent the clause is ineffective, the ineffectively appointed property:

(a) Passes to:

(i) The powerholder if the powerholder is a permissible appointee and living; or

(ii) If the powerholder is an impermissible appointee or deceased, the powerholder's estate if the estate is a permissible appointee; or

(b) If there is no taker under (a) of this subsection, passes under a reversionary interest to the donor or the donor's transferee or successor in interest.

NEW SECTION. **Sec.**  DISPOSITION OF UNAPPOINTED PROPERTY UNDER RELEASED OR UNEXERCISED GENERAL POWER. To the extent a powerholder releases or fails to exercise a general power of appointment other than a power to withdraw property from, revoke, or amend a trust:

(1) The gift-in-default clause controls the disposition of the unappointed property; or

(2) If there is no gift-in-default clause or to the extent the clause is ineffective:

(a) Except as otherwise provided in (b) of this subsection, the unappointed property passes to:

(i) The powerholder if the powerholder is a permissible appointee and living; or

(ii) If the powerholder is an impermissible appointee or deceased, the powerholder's estate if the estate is a permissible appointee; or

(b) To the extent the powerholder released the power, or if there is no taker under (a) of this subsection, the unappointed property passes under a reversionary interest to the donor or the donor's transferee or successor in interest.

NEW SECTION. **Sec.**  DISPOSITION OF UNAPPOINTED PROPERTY UNDER RELEASED OR UNEXERCISED NONGENERAL POWER. To the extent a powerholder releases, ineffectively exercises, or fails to exercise a nongeneral power of appointment:

(1) The gift-in-default clause controls the disposition of the unappointed property; or

(2) If there is no gift-in-default clause or to the extent the clause is ineffective, the unappointed property:

(a) Passes to the permissible appointees if:

(i) The permissible appointees are defined and limited; and

(ii) The terms of the instrument creating the power do not manifest a contrary intent; or

(b) If there is no taker under (a) of this subsection, passes under a reversionary interest to the donor or the donor's transferee or successor in interest.

NEW SECTION. **Sec.**  DISPOSITION OF UNAPPOINTED PROPERTY IF PARTIAL APPOINTMENT TO TAKER IN DEFAULT. Unless the terms of the instrument creating or exercising a power of appointment manifest a contrary intent, if the powerholder makes a valid partial appointment to a taker in default of appointment, the taker in default of appointment may share fully in unappointed property.

NEW SECTION. **Sec.**  APPOINTMENT TO TAKER IN DEFAULT. If a powerholder makes an appointment to a taker in default of appointment and the appointee would have taken the property in the same manner and with the same conditions under a gift-in-default clause had the property not been appointed, the power of appointment is deemed not to have been exercised and the appointee takes under the clause.

NEW SECTION. **Sec.**  POWERHOLDER'S AUTHORITY TO REVOKE OR AMEND EXERCISE. A powerholder may revoke or amend an exercise of a power of appointment only to the extent that:

(1) The powerholder reserves a power of revocation or amendment in the instrument exercising the power of appointment and, if the power is nongeneral, the terms of the instrument creating the power of appointment do not prohibit the reservation; or

(2) The terms of the instrument creating the power of appointment provide that the exercise is revocable or amendable.

NEW SECTION. **Sec.**  NOTICE OF EXERCISE OF TESTAMENTARY POWER. Unless the person holding property subject to a testamentary power of appointment has within six months after the holder's death received written notice that the powerholder's last will has been admitted to probate or an adjudication of testacy has been entered with respect to the powerholder's last will in some jurisdiction, the person may, until the time the notice is received, transfer the property subject to appointment on the basis that the power has not been effectively exercised.

**ARTICLE 4**

**DISCLAIMER OR RELEASE—CONTRACT TO APPOINT OR NOT TO APPOINT**

NEW SECTION. **Sec.**  DISCLAIMER. As provided by chapter 11.86 RCW:

(1) A powerholder may disclaim all or part of a power of appointment.

(2) A permissible appointee, appointee, or taker in default of appointment may disclaim all or part of an interest in appointive property.

NEW SECTION. **Sec.**  AUTHORITY TO RELEASE. A powerholder may release a power of appointment, in whole or in part, except to the extent the terms of the instrument creating the power prevent the release.

NEW SECTION. **Sec.**  METHOD OF RELEASE. A powerholder of a releasable power of appointment may release the power in whole or in part:

(1) By substantial compliance with a method provided in the terms of the instrument creating the power; or

(2) If the terms of the instrument creating the power do not provide a method or the method provided in the terms of the instrument is not expressly made exclusive, by a record manifesting the powerholder's intent by clear and convincing evidence.

NEW SECTION. **Sec.**  REVOCATION OR AMENDMENT OF RELEASE. A powerholder may revoke or amend a release of a power of appointment only to the extent that:

(1) The instrument of release is revocable by the powerholder; or

(2) The powerholder reserves a power of revocation or amendment in the instrument of release.

NEW SECTION. **Sec.**  POWER TO CONTRACT—PRESENTLY EXERCISABLE POWER OF APPOINTMENT. A powerholder of a presently exercisable power of appointment may contract:

(1) Not to exercise the power; or

(2) To exercise the power if the contract when made does not confer a benefit on an impermissible appointee.

NEW SECTION. **Sec.**  POWER TO CONTRACT—POWER OF APPOINTMENT NOT PRESENTLY EXERCISABLE. A powerholder of a power of appointment that is not presently exercisable may contract to exercise or not to exercise the power only if the powerholder:

(1) Is also the donor of the power; and

(2) Has reserved the power in a revocable trust.

NEW SECTION. **Sec.**  REMEDY FOR BREACH OF CONTRACT TO APPOINT OR NOT TO APPOINT. The remedy for a powerholder's breach of a contract to appoint or not to appoint appointive property is limited to damages payable out of the appointive property or, if appropriate, specific performance of the contract.

**ARTICLE 5**

**RIGHTS OF POWERHOLDER'S CREDITORS IN APPOINTIVE PROPERTY**

NEW SECTION. **Sec.**  CREDITOR CLAIM—GENERAL POWER CREATED BY POWERHOLDER. (1) In this section, "power of appointment created by the powerholder" includes a power of appointment created in a transfer by another person to the extent the powerholder contributed value to the transfer.

(2) Appointive property subject to a general power of appointment created by the powerholder is subject to a claim of a creditor of the powerholder or of the powerholder's estate to the extent provided in chapter 19.40 RCW.

(3) Subject to subsection (2) of this section, appointive property subject to a general power of appointment created by the powerholder is not subject to a claim of a creditor of the powerholder or the powerholder's estate to the extent the powerholder irrevocably appointed the property in favor of a person other than the powerholder or the powerholder's estate.

(4) Subject to subsections (2) and (3) of this section, and notwithstanding the presence of a spendthrift provision or whether the claim arose before or after the creation of the power of appointment, appointive property subject to a general power of appointment created by the powerholder is subject to a claim of a creditor of:

(a) The powerholder, to the same extent as if the powerholder owned the appointive property, if the power is presently exercisable; and

(b) The powerholder's estate, to the extent the estate is insufficient to satisfy the claim and subject to the right of a decedent to direct the source from which liabilities are paid, if the power is exercisable at the powerholder's death.

NEW SECTION. **Sec.**  CREDITOR CLAIM—GENERAL POWER NOT CREATED BY POWERHOLDER. (1) Except as otherwise provided in subsection (2) of this section, appointive property subject to a general power of appointment created by a person other than the powerholder is subject to a claim of a creditor of:

(a) The powerholder, to the extent the powerholder's property is insufficient, if the power is presently exercisable; and

(b) The powerholder's estate, to the extent the estate is insufficient, subject to the right of a decedent to direct the source from which liabilities are paid.

(2) Subject to section 3504(3) of this act, a power of appointment created by a person other than the powerholder which is subject to an ascertainable standard relating to an individual's health, education, support, or maintenance within the meaning of 26 U.S.C. Sec. 2041(b)(1)(A) or 26 U.S.C. Sec. 2514(c)(1), on the effective date of this section, is treated for purposes of sections 3501 through 3504 of this act as a nongeneral power.

NEW SECTION. **Sec.**  POWER TO WITHDRAW. (1) For purposes of sections 3501 through 3504 of this act, and except as otherwise provided in subsection (2) of this section, a power to withdraw property from a trust is treated, during the time the power may be exercised, as a presently exercisable general power of appointment to the extent of the property subject to the power to withdraw.

(2) On the lapse, release, or waiver of a power to withdraw property from a trust, the power is treated as a presently exercisable general power of appointment only to the extent the value of the property affected by the lapse, release, or waiver exceeds the greater of the amount specified in 26 U.S.C. Sec. 2041(b)(2) and 26 U.S.C. Sec. 2514(e) or the amount specified in 26 U.S.C. Sec. 2503(b), on the effective date of this section.

NEW SECTION. **Sec.**  CREDITOR CLAIM—NONGENERAL POWER. (1) Except as otherwise provided in subsections (2) and (3) of this section, appointive property subject to a nongeneral power of appointment is exempt from a claim of a creditor of the powerholder or the powerholder's estate.

(2) Appointive property subject to a nongeneral power of appointment is subject to a claim of a creditor of the powerholder or the powerholder's estate to the extent that the powerholder owned the property and, reserving the nongeneral power, transferred the property in violation of chapter 19.40 RCW.

(3) If the initial gift in default of appointment is to the powerholder or the powerholder's estate, a nongeneral power of appointment is treated for purposes of this section and sections 3501 through 3503 of this act as a general power.

**ARTICLE 6**

**MISCELLANEOUS PROVISIONS**

NEW SECTION. **Sec.**  UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

NEW SECTION. **Sec.**  RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This chapter modifies, limits, or supersedes the electronic signatures in global and national commerce act, 15 U.S.C. Sec. 7001 et seq., but does not modify, limit, or supersede section 101(c) of that act, 15 U.S.C. Sec. 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that act, 15 U.S.C. Sec. 7003(b).

NEW SECTION. **Sec.**  APPLICATION TO EXISTING RELATIONSHIPS. (1) Except as otherwise provided in this chapter, on and after the effective date of this section:

(a) This chapter applies to a power of appointment created before, on, or after the effective date of this section;

(b) This chapter applies to a judicial proceeding concerning a power of appointment commenced on or after the effective date of this section;

(c) This chapter applies to a judicial proceeding concerning a power of appointment commenced before the effective date of this section unless the court finds that application of a particular provision of this chapter would interfere substantially with the effective conduct of the judicial proceeding or prejudice a right of a party, in which case the particular provision of this chapter does not apply and the superseded law applies;

(d) A rule of construction or presumption provided in this chapter applies to an instrument executed before the effective date of this section unless there is a clear indication of a contrary intent in the terms of the instrument; and

(e) Except as otherwise provided in (a) through (d) of this subsection, an action done before the effective date of this section is not affected by this chapter.

(2) If a right is acquired, extinguished, or barred on the expiration of a prescribed period that commenced under law of this state other than this chapter before the effective date of this section, the law continues to apply to the right.

**Sec.**  RCW 11.12.110 and 2005 c 97 s 2 are each amended to read as follows:

Unless otherwise provided, when any property shall be given or any appointee appointed under a will, or under a trust of which the decedent is a grantor and which by its terms becomes irrevocable upon or before the grantor's death, to any issue of a grandparent of the decedent and that issue dies before the decedent, or dies before that issue's interest is no longer subject to a contingency, leaving descendants who survive the decedent, those descendants shall take that property or appointment as the predeceased issue would have done if the predeceased issue had survived the decedent. If those descendants are all in the same degree of kinship to the predeceased issue they shall take equally or, if of unequal degree, then those of more remote degree shall take by representation with respect to the predeceased issue.

**Sec.**  RCW 11.12.120 and 1999 c 42 s 604 are each amended to read as follows:

(1) If a will makes a gift to a person on the condition that the person survive the testator and the person does not survive the testator, then, unless otherwise provided, the gift lapses and falls into the residue of the estate to be distributed under the residuary clause of the will, if any, but otherwise according to the laws of descent and distribution.

(2) If the will gives the residue to two or more persons, the share of a person who does not survive the testator passes, unless otherwise provided, and subject to RCW 11.12.110, to the other person or persons receiving the residue, in proportion to the interest of each in the remaining part of the residue.

(3) The personal representative of the testator, a person who would be affected by the lapse or distribution of a gift under this section, or a guardian ad litem or other representative appointed to represent the interests of a person so affected may petition the court for a determination under this section, and the petition must be heard under the procedures of chapter 11.96A RCW.

(4) For purposes of this section, the appointment of an appointee under a will is a gift and may form part of the residue.

**Sec.**  RCW 11.95.110 and 1993 c 339 s 8 are each amended to read as follows:

If the holder of a lifetime or testamentary power of appointment may exercise the power in his or her own favor only for his or her health, education, support, or maintenance as described in section 2041 or 2514 of the Internal Revenue Code and the applicable regulations adopted under that section, then a provision of the instrument creating the power of appointment that purports to confer "absolute," "sole," "complete," "conclusive," or a similar discretion shall be disregarded in the exercise of that power in favor of the holder, and that power may then only be exercised reasonably and in accordance with the ascertainable standards set forth in RCW 11.95.100 (as recodified by this act) and this section. A person who has the right to remove or replace a trustee does not possess nor may the person be deemed to possess, by virtue of having that right, the power of the trustee who is subject to removal or to replacement.

**Sec.**  RCW 11.95.120 and 1993 c 339 s 9 are each amended to read as follows:

Notwithstanding any provision of RCW 11.95.100 through 11.95.150 (as recodified by this act) seemingly to the contrary, RCW 11.95.100 through 11.95.150 (as recodified by this act) do not limit or restrict the distribution of income of a trust that qualifies or that otherwise could have qualified for the marital deduction under section 2056 or 2523 of the Internal Revenue Code, those Internal Revenue Code sections requiring that all income be distributed to the spouse of the decedent or of the trustor at least annually, whether or not an election was in fact made under section 2056(b)(7) or 2523(f) of the Internal Revenue Code. Further, RCW 11.95.100 through 11.95.150 (as recodified by this act) do not limit or restrict the power of a spouse of the trustor or the spouse of the decedent to exercise a power of appointment described in section 2056(b)(5) or 2523(e) of the Internal Revenue Code with respect to that portion of the trust that could otherwise qualify for the marital deduction under either of those Internal Revenue Code sections.

**Sec.**  RCW 11.95.130 and 1993 c 339 s 10 are each amended to read as follows:

RCW 11.95.100 through 11.95.150 (as recodified by this act) do not raise an inference that the law of this state prior to July 25, 1993, was different than contained in RCW 11.95.100 through 11.95.150 (as recodified by this act).

**Sec.**  RCW 11.95.140 and 1999 c 42 s 617 are each amended to read as follows:

(1)(a) RCW 11.95.100 and 11.95.110 (as recodified by this act) respectively apply to a power of appointment created:

(i) Under a will, codicil, trust agreement, or declaration of trust, deed, power of attorney, or other instrument executed after July 25, 1993, unless the terms of the instrument refer specifically to RCW 11.95.100 or 11.95.110 (as recodified by this act) respectively and provide expressly to the contrary; or

(ii) Under a testamentary trust, trust agreement, or declaration of trust executed before July 25, 1993, unless:

(A) The trust is revoked, or amended to provide otherwise, and the terms of any amendment specifically refer to RCW 11.95.100 or 11.95.110 (as recodified by this act), respectively, and provide expressly to the contrary;

(B) All parties in interest, as defined in RCW 11.98.240(3), elect affirmatively, in the manner prescribed in RCW 11.98.240(4), not to be subject to the application of this subsection. The election must be made by the later of September 1, 2000, or three years after the date on which the trust becomes irrevocable; or

(C) A person entitled to judicial proceedings for a declaration of rights or legal relations under RCW 11.96A.080 obtains a judicial determination that the application of this subsection (1)(a)(ii) to the trust is inconsistent with the provisions or purposes of the will or trust.

(b) Notwithstanding (a) of this subsection, for the purposes of this section a codicil to a will, an amendment to a trust, or an amendment to another instrument that created the power of appointment in question shall not be deemed to cause that instrument to be executed after July 25, 1993, unless the codicil or amendment clearly shows an intent to have RCW 11.95.100 or 11.95.110 (as recodified by this act) apply.

(2) Notwithstanding subsection (1) of this section, RCW 11.95.100 through 11.95.150 (as recodified by this act) shall apply to a power of appointment created under a will, codicil, trust agreement, or declaration of trust, deed, power of attorney, or other instrument executed prior to July 25, 1993, if the person who created the power of appointment had on July 25, 1993, the power to revoke, amend, or modify the instrument creating the power of appointment, unless:

(a) The terms of the instrument specifically refer to RCW 11.95.100 or 11.95.110 (as recodified by this act) respectively and provide expressly to the contrary; or

(b) The person creating the power of appointment was not competent, on July 25, 1993, to revoke, amend, or modify the instrument creating the power of appointment and did not regain his or her competence to revoke, amend, or modify the instrument creating the power of appointment on or before his or her death or before the time at which the instrument could no longer be revoked, amended, or modified by the person.

(3) For purposes of this section, a reference in an instrument to:

(a) RCW 11.95.100 is a reference to RCW 11.95.100 (as recodified by this act); and

(b) RCW 11.95.110 is a reference to RCW 11.95.110 (as recodified by this act).

**Sec.**  RCW 11.95.150 and 1993 c 339 s 12 are each amended to read as follows:

RCW 11.95.100 through 11.95.140 (as recodified by this act) neither create a new cause of action nor impair an existing cause of action that, in either case, relates to a power that was exercised before July 25, 1993. RCW 11.95.100 through 11.95.140 (as recodified by this act) neither create a new cause of action nor impair an existing cause of action that in either case relates to a power proscribed, limited, or qualified under RCW 11.95.100 through 11.95.140 (as recodified by this act).

**Sec.**  RCW 11.97.010 and 2013 c 272 s 7 are each amended to read as follows:

The trustor of a trust may by the provisions of the trust relieve the trustee from any or all of the duties, restrictions, and liabilities which would otherwise be imposed by chapters ((~~11.95~~)) 11.--- (the new chapter created in section 3615 of this act), 11.98, 11.100, and ((~~11.104A~~)) 11.--- (the new chapter created in section 2808 of this act) RCW and RCW 11.106.020, or may alter or deny any or all of the privileges and powers conferred by those provisions; or may add duties, restrictions, liabilities, privileges, or powers to those imposed or granted by those provisions. If any specific provision of those chapters is in conflict with the provisions of a trust, the provisions of the trust control whether or not specific reference is made in the trust to any of those chapters, except as provided in RCW 6.32.250, 11.96A.190, 19.36.020, 11.98.002, 11.98.200 through 11.98.240, 11.98.072(1), 11.95.100 (as recodified by this act) through 11.95.150 (as recodified by this act), and chapter 11.103 RCW. In no event may a trustee be relieved of the duty to act in good faith and with honest judgment. 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 must exercise a discretionary power in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries.

**Sec.**  RCW 11.97.900 and 2003 c 254 s 5 are each amended to read as follows:

This chapter applies to the provisions of chapters ((~~11.95~~)) 11.--- (the new chapter created in section 3615 of this act), 11.98, 11.100, and ((~~11.104A~~)) 11.--- (the new chapter created in section 2808 of this act) RCW and to RCW 11.106.020.

NEW SECTION. **Sec.**  RCW 11.95.100, 11.95.110, 11.95.120, 11.95.130, 11.95.140, and 11.95.150 are each recodified as sections in chapter 11.--- RCW (the new chapter created in section 3614 of this act).

NEW SECTION. **Sec.**  The following acts or parts of acts are each repealed:

(1)RCW 11.95.010 (Releases) and 1985 c 30 s 31;

(2)RCW 11.95.020 (Releases—Partial releases) and 1985 c 30 s 32;

(3)RCW 11.95.030 (Releases—Delivery) and 1995 c 91 s 1 & 1985 c 30 s 33;

(4)RCW 11.95.040 (Releases—Effect of RCW 11.95.010 through 11.95.050 on prior releases) and 1985 c 30 s 34;

(5)RCW 11.95.060 (Exercise of powers of appointment) and 1989 c 33 s 1 & 1985 c 30 s 36;

(6)RCW 11.95.070 (Application of chapter—Application of 1984 c 149) and 2006 c 360 s 8 & 1985 c 30 s 37;

(7)RCW 11.95.160 (Lapse of a power—Intent not to exercise a power—Treatment) and 2006 c 360 s 12; and

(8)RCW 11.95.900 (Construction—Chapter applicable to state registered domestic partnerships—2009 c 521) and 2009 c 521 s 38.

NEW SECTION. **Sec.**  CODIFICATION. Sections 3101 through 3603 and 3616 of this act constitute a new chapter in Title 11 RCW.

NEW SECTION. **Sec.**  EFFECTIVE DATE. Sections 3101 through 3614 of this act take effect January 1, 2022.

**PART IV**

**MISCELLANEOUS PROVISIONS**

**Sec.**  RCW 11.40.140 and 1999 c 42 s 608 are each amended to read as follows:

If the personal representative has a claim against the decedent, the personal representative must present the claim in the manner provided in RCW 11.40.070, and ((~~petition the court for~~)) the allowance or rejection((~~. The petition must be filed under RCW 11.96A.080~~)) of the claim shall be addressed, resolved, and settled under the procedures provided under chapter 11.96A RCW. This section applies whether or not the personal representative is acting under nonintervention powers.

**Sec.**  RCW 11.48.120 and 2010 c 8 s 2038 are each amended to read as follows:

Any personal representative may in his or her own name, for the benefit of all ((~~parties~~)) persons interested in the estate, as defined in RCW 11.96A.030(6) relative to a decedent's estate, maintain actions on the bond of a former personal representative of the same estate.

**Sec.**  RCW 11.48.130 and 1997 c 252 s 58 are each amended to read as follows:

The court may authorize the personal representative, without the necessary nonintervention powers, to compromise and compound any claim owing the estate. Unless the court has restricted the power to compromise or compound claims owing to the estate and except as provided in RCW 11.68.090, a personal representative with nonintervention powers may compromise and compound a claim owing the estate without the intervention of the court.

**Sec.**  RCW 11.68.041 and 1997 c 252 s 61 are each amended to read as follows:

(1) Advance notice of the hearing on a petition for nonintervention powers referred to in RCW 11.68.011 is not required in those circumstances in which the court is required to grant nonintervention powers under RCW 11.68.011(2) (a) and (b).

(2) In all other cases, if the petitioner wishes to obtain nonintervention powers, the personal representative shall give notice of the petitioner's intention to apply to the court for nonintervention powers to all heirs, all beneficiaries of a gift under the decedent's will, and all persons who have requested, and who are entitled to, notice under RCW 11.28.240, except that:

(a) A person is not entitled to notice if the person has, in writing, either waived notice of the hearing or consented to the grant of nonintervention powers; and

(b) An heir who is not also a beneficiary of a gift under a will is not entitled to notice if the will has been probated and the time for contesting the validity of the will has expired.

(3) The notice required by this section must be either personally served or sent by regular mail at least ten days before the date of the hearing, and proof of mailing of the notice must be by affidavit filed in the cause. The notice must contain the decedent's name, the probate cause number, and the name and address of the personal representative, and must state in substance as follows:

(a) The personal representative has petitioned the superior court of the state of Washington for . . . . . county, for the entry of an order granting nonintervention powers and a hearing on that petition will be held on . . . . ., the . . . . . day of . . . . ., . . . ., at . . . . . o'clock, . . M.;

(b) The petition for an order granting nonintervention powers has been filed with the court;

(c) Following the entry by the court of an order granting nonintervention powers, the personal representative is entitled to administer and close the decedent's estate without further court intervention or supervision; and

(d) A person entitled to notice has the right to appear at the time of the hearing on the petition for an order granting nonintervention powers and to object to the granting of nonintervention powers to the personal representative.

(4) If notice is not required, or all persons entitled to notice have either waived notice of the hearing or consented to the entry of an order granting nonintervention powers as provided in this section, the court may hear the petition for an order granting nonintervention powers at any time.

**Sec.**  RCW 11.68.050 and 1997 c 252 s 62 are each amended to read as follows:

(1) If at the time set for the hearing upon a petition for nonintervention powers, any person entitled to notice of the hearing on the petition under RCW 11.68.041 shall appear and object to the granting of nonintervention powers to the personal representative of the estate, the court shall consider the objections, if any, in connection with its determination under RCW 11.68.011(2)(c) of whether a grant of nonintervention powers would be in the best interests of the decedent's beneficiaries.

(2) The nonintervention powers of a personal representative may not be restricted at a hearing on a petition for nonintervention powers in which the court is required to grant nonintervention powers under RCW 11.68.011(2) (a) and (b), unless a will specifies that the nonintervention powers of a personal representative may be restricted when the powers are initially granted. ((~~In all other cases, including without limitation any hearing on a petition that alleges that the personal representative has breached its duties to the beneficiaries of the estate, the court may restrict the powers of the personal representative in such manner as the court determines to be in the best interests of the decedent's beneficiaries.~~))

NEW SECTION. **Sec.**  A new section is added to chapter 11.68 RCW to read as follows:

A personal representative with nonintervention powers may administer and settle the estate without supervision or intervention by the court except as otherwise provided in this chapter.

NEW SECTION. **Sec.**  A new section is added to chapter 11.68 RCW to read as follows:

(1) A personal representative with nonintervention powers has the power to construe and interpret the terms of a probated will, except as the probated will or an order of the court may otherwise direct.

(2) Unless otherwise provided in the probated will:

(a) A party, as defined in RCW 11.96A.030, may either petition the court under chapter 11.96A RCW to have an ambiguous provision of a probated will construed by the court or may otherwise address, resolve, and settle the matter under the procedures provided under chapter 11.96A RCW; and

(b) There is a rebuttable presumption that the construction of an ambiguous provision that is made by a personal representative with nonintervention powers is consistent with the intent of the testator.

(3) A party, as defined in RCW 11.96A.030, may commence an action to reform the terms of a will as provided in RCW 11.96A.125.

**Sec.**  RCW 11.68.065 and 1999 c 42 s 614 are each amended to read as follows:

A beneficiary ((~~whose~~)) who has not acknowledged in writing that his, her, or its interest in an estate has ((~~not~~)) been fully paid or distributed may petition the court for an order directing the personal representative to deliver a report of the affairs of the estate signed and verified by the personal representative. The petition may be filed at any time after one year from the day on which the report was last delivered, or, if none, then one year after the order appointing the personal representative. Upon hearing of the petition after due notice as required in RCW 11.96A.110, the court may, for good cause shown, order the personal representative to deliver to the petitioner the report for any period not covered by a previous report. The report for the period shall include such of the following as the court may order: A description of the amount and nature of all property, real and personal, that has come into the hands of the personal representative; a statement of all property collected and paid out or distributed by the personal representative; a statement of claims filed and allowed against the estate and those rejected; any estate, inheritance, or fiduciary income tax returns filed by the personal representative; and such other information as the order may require. This subsection does not limit any power the court might otherwise have at any time during the administration of the estate to require the personal representative to account or furnish other information to any person interested in the estate.

**Sec.**  RCW 11.68.070 and 2010 c 8 s 2057 are each amended to read as follows:

((~~If any personal representative who has been granted nonintervention powers fails to execute his or her trust faithfully or is subject to removal for any reason specified in RCW 11.28.250 as now or hereafter amended, upon petition of any unpaid creditor of the estate who has filed a claim or any heir, devisee, legatee, or of any person on behalf of any incompetent heir, devisee, or legatee, such petition being supported by affidavit which makes a prima facie showing of cause for removal or restriction of powers, the court shall cite such personal representative to appear before it, and if, upon hearing of the petition it appears that said personal representative has not faithfully discharged said trust or is subject to removal for any reason specified in RCW 11.28.250 as now or hereafter amended, then, in the discretion of the court the powers of the personal representative may be restricted or the personal representative may be removed and a successor appointed. In the event the court shall restrict the powers of the personal representative in any manner, it shall endorse the words "Powers restricted" upon the original order of solvency together with the date of said endorsement, and in all such cases the cost of the citation, hearing, and reasonable attorney's fees may be awarded as the court determines.~~)) (1)(a) A party, as defined in RCW 11.96A.030, may petition the court under chapter 11.96A RCW for a determination that a personal representative:

(i) Has breached a fiduciary duty;

(ii) Has exceeded the personal representative's authority;

(iii) Has abused the personal representative's discretion in exercising a power;

(iv) Has otherwise failed to execute the trust faithfully;

(v) Has violated a statute or common law affecting the estate; or

(vi) Is subject to removal for a reason specified in RCW 11.28.250.

(b) The petition submitted under (a) of this subsection must allege facts in support of the claim and must be verified or be supported by an affidavit showing facts in support of the claim.

(2) If the court finds that the personal representative has committed one or more of the acts listed in subsection (1)(a) of this section, the court may order such remedy in law or in equity as it deems appropriate. The remedy may include, but not be limited to, awarding money damages, surcharging the personal representative, directing the personal representative to take a specific action, restricting the powers of the personal representative, removing the personal representative and appointing a successor, and awarding fees and costs under RCW 11.96A.150. If the court restricts the powers of the personal representative, it shall endorse the words "powers restricted" upon the original order granting the personal representative nonintervention powers and upon the letters testamentary or of administration together with the date of the endorsement.

**Sec.**  RCW 11.68.090 and 2011 c 327 s 3 are each amended to read as follows:

(1) ((~~Any personal representative acting under nonintervention powers may borrow money on the general credit of the estate and may mortgage, encumber, lease, sell, exchange, convey, and otherwise have the same powers, and be subject to the same limitations of liability, that a trustee has under chapters 11.98, 11.100, and 11.102 RCW with regard to the assets of the estate, both real and personal, all without an order of court and without notice, approval, or confirmation, and in all other respects administer and settle the estate of the decedent without intervention of court. Except as otherwise specifically provided in this title or by order of court, a personal representative acting under nonintervention powers may exercise the powers granted to a personal representative under chapter 11.76 RCW but is not obligated to comply with the duties imposed on personal representatives by that chapter. A party to such a transaction and the party's successors in interest are entitled to have it conclusively presumed that the transaction is necessary for the administration of the decedent's estate.~~

~~(2) Except as otherwise provided in chapter 11.108 RCW or elsewhere in order to preserve a marital deduction from estate taxes, a testator may by a will relieve the personal representative from any or all of the duties, restrictions, and liabilities imposed: Under common law; by chapters 11.54, 11.56, 11.100, 11.102, and 11.104A RCW; or by RCW 11.28.270 and 11.28.280, 11.68.095, and 11.98.070. In addition, a testator may likewise alter or deny any or all of the privileges and powers conferred by this title, and may add duties, restrictions, liabilities, privileges, or powers to those imposed or granted by this title. If any common law or any statute referenced earlier in this subsection is in conflict with a will, the will controls whether or not specific reference is made in the will to this section. However, notwithstanding the rest of this subsection, a personal representative may not be relieved of the duty to act in good faith and with honest judgment.~~)) Except as otherwise provided in this chapter, a personal representative with nonintervention powers has:

(a) All powers that are granted by common law or statute to a personal representative without nonintervention powers or that a court supervising the settlement and administration of a decedent's estate may grant to a personal representative without nonintervention powers;

(b) The power to borrow money on the general credit of the estate;

(c) The power to mortgage, encumber, lease, sell, exchange, convey, assign, and otherwise transfer the decedent's real and personal property;

(d) The power to perform the decedent's contracts;

(e) The power to determine the persons entitled to the estate; to partition property, sell property, and/or distribute property pro rata or nonpro rata, and otherwise to administer and settle the decedent's estate;

(f) The powers, privileges, and limitations of liability of a trustee under chapters 11.98, 11.100, and 11.102 RCW and under the principles of equity with regard to the assets of the estate, both real and personal;

(g) Any further power appropriate to the exercise or nonexercise of a power granted under this subsection (1); and

(h) The right and authority to exercise the powers under this subsection (1) without an order of the court and without notice to, direction from, approval by, confirmation by, or intervention of any court.

(2) Except as otherwise provided in this chapter, a personal representative with nonintervention powers has the same duties, restrictions, and liabilities as a personal representative without nonintervention powers and shall act for the benefit of all persons interested in the estate, as defined in RCW 11.96A.030(6) relative to a decedent's estate, except that:

(a) A personal representative with nonintervention powers may act without an order of the court and without notice to, direction from, approval by, confirmation by, or intervention of any court;

(b) A personal representative with nonintervention powers has no duty to follow the procedures of RCW 11.76.010 through 11.76.080 or chapter 11.56 RCW; and

(c) A personal representative with nonintervention powers must exercise a discretionary power in good faith, with honest judgment, and in accordance with the terms and purposes of the probated will and the interests of the beneficiaries.

(3) Except as provided in subsection (4) of this section, a testator may by will:

(a) Add to, alter, or deny any or all of the powers and privileges conferred upon the personal representative with nonintervention powers to administer and settle the testator's estate by common law, statute, or the principles of equity; and

(b) Add to, alter, or remove any or all of the duties, restrictions, or liabilities imposed on a personal representative with nonintervention powers relative to the administration and settlement of the testator's estate by common law, statute, or the principles of equity.

(4) No testamentary provisions may limit the effect of RCW 6.32.250, 11.20.080, 11.48.010, 11.48.020 (although without the necessity of any order of a court), 11.48.030, 11.48.140,11.68.065, 11.68.070, 11.68.080, 11.68.090, 11.76.110, 11.76.150, 11.76.160, 11.76.170, or 11.96A.190, or of chapters 11.36, 11.44, 11.54, and 11.108 RCW or any other laws that preserve a marital deduction from estate taxes; and in no event may a personal representative with nonintervention powers be relieved of the duty to act in good faith, with honest judgment, and in accordance with the terms and purposes of the probated will and the interests of the beneficiaries.

(5) The common law and the principles of equity supplement this chapter.

**Sec.**  RCW 11.68.095 and 1997 c 252 s 67 are each amended to read as follows:

((~~All~~)) Except as otherwise provided by the probated will or by order of a court, all of the provisions of RCW 11.98.016 regarding the exercise of powers by co-trustees of a trust shall apply to the co-personal representatives of an estate in which the co-personal representatives have been granted nonintervention powers, as if, for purposes of the interpretation of that law, co-personal representatives were co-trustees and an estate were a trust.

NEW SECTION. **Sec.**  A new section is added to chapter 11.68 RCW to read as follows:

A party to a transaction with a personal representative with nonintervention powers and the party's successors in interest are entitled to have it conclusively presumed that the transaction is necessary for the administration of the decedent's estate.

**Sec.**  RCW 11.68.100 and 2010 c 8 s 2058 are each amended to read as follows:

(1) When the estate is ready to be closed, the court, upon application by the personal representative who has nonintervention powers, shall ((~~have the authority and it shall be its duty, to~~)) make and cause to be entered a decree ((~~which~~)) that either:

(a) Finds and adjudges that all approved claims ((~~of~~)) against the decedent have been paid, finds and adjudges the heirs of the decedent or those persons entitled to take under ((~~his or her~~)) the decedent's will, and distributes the decedent's property ((~~of the decedent~~)) to the persons entitled ((~~thereto~~)) to it; or

(b) Approves the accounting of the personal representative and settles the estate of the decedent in the manner provided for in the administration of those estates in which the personal representative has not acquired nonintervention powers.

(2) Either decree provided for in this section shall be made after notice given as provided for in the settlement of estates by a personal representative who has not acquired nonintervention powers. The petition for either decree provided for in this section shall state the fees paid or proposed to be paid to the personal representative, ((~~his or her~~)) the personal representative's attorneys, accountants, and appraisers, and any heir, devisee, or legatee whose interest in the assets of a decedent's estate would be reduced by the payment of said fees shall receive a copy of said petition with the notice of hearing thereon; at the request of the personal representative or any said heir, devisee, or legatee, the court shall, at the time of the hearing on either petition, determine the reasonableness of said fees. The court shall take into consideration all criteria forming the basis for the determination of the amount of such fees as contained in the code of professional responsibility; in determining the reasonableness of the fees charged by any personal representative, accountants, and appraisers the court shall take into consideration the criteria forming the basis for the determination of attorney's fees, to the extent applicable, and any other factors which the court determines to be relevant in the determination of the amount of fees to be paid to such personal representative.

**Sec.**  RCW 11.68.110 and 2016 c 202 s 8 are each amended to read as follows:

(1) If a personal representative who has acquired nonintervention powers does not apply to the court for either of the final decrees provided for in RCW 11.68.100 as now or hereafter amended, the personal representative shall, when the administration of the estate has been completed, file a declaration that must state as follows:

(a) The date of the decedent's death and the decedent's residence at the time of death;

(b) Whether or not the decedent died testate or intestate;

(c) If the decedent died testate, the date of the decedent's last will and testament and the date of the order probating the will;

(d) That each creditor's claim which was justly due and properly presented as required by law has been paid or otherwise disposed of by agreement with the creditor, and that the amount of ((~~estate~~)) taxes ((~~due as the result of the decedent's death~~)) assessable against the estate has been determined, settled, and paid or otherwise provided for;

(e) That the personal representative has completed the administration of the decedent's estate without court intervention, and the estate is ready to be ((~~closed~~)) settled and distributed;

(f) If the decedent died intestate, the names, addresses (if known), and relationship of each heir of the decedent, together with the distributive share of each heir; and

(g) The amount of fees paid or to be paid to each of the following: (i) Personal representative or representatives; (ii) lawyer or lawyers; (iii) appraiser or appraisers; and (iv) accountant or accountants; and that the personal representative believes the fees to be reasonable and does not intend to obtain court approval of the amount of the fees or to submit an estate accounting to the court for approval.

(2) ((~~Subject to the requirement of notice as provided in this section, unless an heir, devisee, or legatee of a decedent petitions the court either for an order requiring the personal representative to obtain court approval of the amount of fees paid or to be paid to the personal representative, lawyers, appraisers, or accountants, or for an order requiring an accounting, or both, within thirty days from the date of filing a declaration of completion of probate, the personal representative will be automatically discharged without further order of the court and the representative's powers will cease thirty days after the filing of the declaration of completion of probate, and the declaration of completion of probate shall, at that time, be the equivalent of the entry of a decree of distribution in accordance with chapter 11.76 RCW for all legal intents and purposes.~~

~~(3)~~)) If:

(a)(i) The personal representative with nonintervention powers files a declaration as specified in subsection (1) of this section;

(ii) The personal representative provides the notice as required by subsection (4) of this section; and

(iii) No party, as defined in RCW 11.96A.030, petitions the court under subsection (3) of this section; then:

(b)(i) The filing of the declaration will be the legal equivalent of the entry of a decree of distribution under chapter 11.76 RCW;

(ii) The amount of fees paid or to be paid will be deemed reasonable and will be approved;

(iii) The acts of the personal representative will be approved;

(iv) The personal representative, and any bond ensuring the proper actions of the personal representative, will be discharged; and

(v) The estate will be determined to have been properly and fully distributed and settled.

(3) If the personal representative provides the notice as required by subsection (4) of this section, then, within 30 days following the filing of a declaration of completion of probate under this section, any party, as defined in RCW 11.96A.030, may petition the court under chapter 11.96A RCW to enforce the party's rights, to review the reasonableness of the fees, and/or to compel the personal representative to close the estate under RCW 11.68.100.

(4) Within five days of the date of the filing of the declaration of completion, the personal representative or the personal representative's lawyer shall mail a copy of the declaration of completion to each ((~~heir, legatee, or devisee of the decedent~~)) party as defined in RCW 11.96A.030, who: (a) Has not waived notice of the filing, in writing, filed in the cause; and (b) either has not received the full amount of the distribution to which the ((~~heir, legatee, or devisee~~)) party is entitled or has a property right that might be affected adversely by the discharge of the personal representative under this section, together with a notice which shall be substantially as follows:

|  |  |  |
| --- | --- | --- |
|  | CAPTION  OF  CASE | NOTICE OF FILING OF  DECLARATION OF COMPLETION  OF PROBATE |
| NOTICE IS GIVEN that the attached Declaration of Completion of Probate was filed by the undersigned in the above-entitled court on the  . . . . day of  . . . . . ., (year) . . . .; unless you ((~~shall file a~~)) petition ((~~in~~)) the above-entitled court ((~~requesting the court to approve~~)) under chapter 11.96A RCW to enforce your rights, to review the reasonableness of the fees, ((~~or for an accounting, or both, and serve a copy thereof upon~~)) and/or to compel the personal representative ((~~or the personal representative's lawyer~~)) to close the estate under RCW 11.68.100, within thirty days after the date of the filing of the Declaration of Completion of Probate, the ((~~amount~~)) schedule of fees ((~~paid or to be paid~~)) set forth in the Declaration of Completion of Probate will be deemed reasonable, the acts of the personal representative will be deemed approved and the payment of those fees will be approved, the personal representative (and any bond ensuring the proper action of the personal representative) will be automatically discharged without further order of the court, the estate will be deemed to have been properly and fully distributed and settled, and the Declaration of Completion of Probate will be final and deemed the equivalent of a Decree of Distribution entered under chapter 11.76 RCW. | | |
| ((~~If you file and serve a petition within the period specified, the undersigned will request the court to fix a time and place for the hearing of your petition, and you will be notified of the time and place thereof, by mail, or personal service, not less than ten days before the hearing on the petition.~~ | | |
| ~~Dated this  . . . . day of  . . . . . ., (year) . . . .~~)) | | |
|  | | |
|  | | Personal ((~~Representative~~)) Representative's Name |

((~~(4)~~)) (5) If all ((~~heirs, devisees, and legatees~~)) parties as defined in RCW 11.96A.030 of the decedent entitled to notice under this section waive, in writing, the notice required by this section, the personal representative will be automatically discharged without further order of the court and the declaration of completion of probate will become effective as a decree of distribution upon the date of filing thereof. In those instances where the personal representative has been required to furnish bond, and a declaration of completion is filed pursuant to this section, any bond furnished by the personal representative shall be automatically discharged upon the discharge of the personal representative.

**Sec.**  RCW 11.68.112 and 1997 c 252 s 69 are each amended to read as follows:

If the declaration of completion of probate and the notice of filing of declaration of completion of probate state that the personal representative intends to make final distribution within five business days after the final date on which a ((~~beneficiary could petition for an order to approve fees or to require an accounting~~)) party as defined in RCW 11.96A.030 entitled to notice under RCW 11.68.110 could file a petition under RCW 11.68.110(3), which date is referred to in this section as the "effective date of the declaration of completion," ((~~and~~)) if the notice of filing of declaration of completion of probate sent to each ((~~beneficiary who has not received everything to which that beneficiary is entitled from the decedent's estate~~)) party as defined in RCW 11.96A.030 entitled to notice under RCW 11.68.110 specifies the amount of the minimum distribution to be made to that ((~~beneficiary~~)) party, and if no party as defined in RCW 11.96A.030 entitled to notice under RCW 11.68.110 petitions the court under RCW 11.68.110(3) within 30 days from the date of filing a declaration of completion of probate, the personal representative retains, for five business days following the effective date of the declaration of completion, the power to make the stated minimum distributions. In this case, the personal representative is discharged from all ((~~claims~~)) liability other than ((~~those~~)) any liability relating to the actual distribution of the reserve, at the effective date of the declaration of completion. The personal representative is only discharged from liability for the distribution of the reserve when the whole reserve has been distributed and each beneficiary has received at least the distribution which that beneficiary's notice stated that the beneficiary would receive.

**Sec.**  RCW 11.68.114 and 1998 c 292 s 203 are each amended to read as follows:

(1) The personal representative retains the powers to: Deal with the taxing authority of any federal, state, or local government; hold a reserve in an amount not to exceed three thousand dollars, for the determination and payment of any additional taxes, interest, and penalties, and of all reasonable expenses related directly or indirectly to such determination or payment; pay from the reserve the reasonable expenses, including compensation for services rendered or goods provided by the personal representative or by the personal representative's employees, independent contractors, and other agents, in addition to any taxes, interest, or penalties assessed by a taxing authority; receive and hold any credit, including interest, from any taxing authority; and distribute the residue of the reserve to the intended beneficiaries of the reserve; if:

(a) In lieu of the statement set forth in RCW 11.68.110(1)(e), the declaration of completion of probate states that:

The personal representative has completed the administration of the decedent's estate without court intervention, and the estate is ready to be closed, except for the determination of taxes and of interest and penalties thereon as permitted under this section;

and

(b) The notice of the filing of declaration of completion of probate must be in substantially the following form:

|  |  |
| --- | --- |
| CAPTION | NOTICE OF FILING OF |
| OF | DECLARATION OF COMPLETION |
| CASE | OF PROBATE |

NOTICE IS GIVEN that the attached Declaration of Completion of Probate was filed by the undersigned in the above-entitled court on the . . . day of . . . . , . . . .; unless you ((~~file a~~)) petition ((~~in~~)) the above-entitled court ((~~requesting the court to approve~~)) under chapter 11.96A RCW to enforce your rights, to review the reasonableness of the fees, ((~~or for an accounting, or both, and serve a copy thereof upon~~)) and/or to compel the personal representative ((~~or the personal representative's lawyer~~)) to close the estate under RCW 11.68.100, within thirty days after the date of the filing of the Declaration of Completion of Probate:

(i) The schedule of fees set forth in the Declaration of Completion of Probate will be deemed reasonable and the payment of those fees will be approved;

(ii) The Declaration of Completion of Probate will be final and deemed the equivalent of a Decree of Distribution entered under chapter 11.76 RCW;

(iii) The acts that the personal representative performed before the Declaration of Completion of Probate was filed will be deemed approved, and the personal representative will be automatically discharged without further order of the court with respect to all such acts; and

(iv) The personal representative will retain the power to deal with the taxing authorities, together with $. . . . for the determination and payment of all remaining tax obligations. Only that portion of the reserve that remains after the settlement of any tax liability, and the payment of any expenses associated with such settlement, will be distributed to the persons legally entitled to the reserve. ((~~(2) If the requirements in subsection (1) of this section are met, the personal representative is discharged from all claims other than those relating to the settlement of any tax obligations and the actual distribution of the reserve, at the effective date of the declaration of completion.~~)) The personal representative ((~~is~~)) (and any bond ensuring the proper action of the personal representative) will be discharged from liability ((~~from~~)) for the settlement of any tax obligations and the distribution of the reserve, and the personal representative's powers will cease, thirty days after the personal representative has mailed to those persons who would have shared in the distribution of the reserve had the reserve remained intact and has filed with the court copies of checks or receipts showing how the reserve was in fact distributed, unless a person with an interest in the reserve petitions the court earlier within the thirty-day period for an order requiring an accounting of the reserve or an order determining the reasonableness, or lack of reasonableness, of distributions made from the reserve.

. . . . . . . . . . . . . . . . . . . . . . . . .

Personal Representative's Name

(2) If the requirements in subsection (1) of this section are met and if no party as defined in RCW 11.96A.030 entitled to notice under RCW 11.68.110 petitions the court under chapter 11.96A RCW to enforce the party's rights, to review the reasonableness of the fees, and/or to compel the personal representative to close the estate under RCW 11.68.100, within 30 days from the date of filing a declaration of completion of probate, the personal representative is discharged from all liability other than liability relating to the settlement of any tax obligations and the actual distribution of the reserve, at the final date on which a beneficiary could petition the court under subsection (1) of this section, which date is referred to in this section as the "effective date of the declaration of completion." The personal representative is discharged from liability for the settlement of any tax obligations and the distribution of the reserve, the personal representative's powers cease, and the declaration of completion of probate will be final and deemed the equivalent of a decree of distribution entered under chapter 11.76 RCW with respect to the distribution of the reserve, 30 days after the personal representative has mailed to those persons who would have shared in the distribution of the reserve had the reserve remained intact and has filed with the court copies of checks or receipts showing how the reserve was in fact distributed, unless a person with an interest in the reserve petitions the court earlier within the 30-day period for an order requiring an accounting of the reserve or an order determining the reasonableness, or lack of reasonableness, of distributions made from the reserve. If the personal representative has been required to furnish a bond, any bond furnished by the personal representative is automatically discharged upon the final discharge of the personal representative.

**Sec.**  RCW 11.68.120 and 2010 c 8 s 2059 are each amended to read as follows:

A personal representative who has acquired nonintervention powers in accordance with this chapter may present a matter, as defined in RCW 11.96A.030, to the court for resolution or for instructions under chapter 11.96A RCW at any time. A personal representative shall not be deemed to have waived ((~~his or her~~)) the personal representative's nonintervention powers by seeking or obtaining any order or decree during the course of ((~~his or her~~)) the administration of the estate.

**Sec.**  RCW 11.96A.030 and 2015 c 115 s 1 are each amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Citation" or "cite" and other similar terms, when required of a person interested in the estate or trust or a party to a petition, means to give notice as required under RCW 11.96A.100. "Citation" or "cite" and other similar terms, when required of the court, means to order, as authorized under RCW 11.96A.020 and 11.96A.060, and as authorized by law.

(2) "Matter" includes any issue, question, or dispute involving:

(a) The determination of any class of creditors, devisees, legatees, heirs, next of kin, or other persons interested in an estate, trust, nonprobate asset, or with respect to any other asset or property interest passing at death;

(b) The direction of a personal representative or trustee to do or to abstain from doing any act in a fiduciary capacity;

(c) The determination of any question arising in the administration of an estate or trust, or with respect to any nonprobate asset, or with respect to any other asset or property interest passing at death, that may include, without limitation, questions relating to: (i) The construction of wills, trusts, community property agreements, and other writings; (ii) a change of personal representative or trustee; (iii) a change of the situs of a trust; (iv) an accounting from a personal representative or trustee; (v) the determination of fees for a personal representative or trustee; or (vi) the powers and duties of a statutory trust ((~~advisor~~)) director or directed trustee of a directed trust under chapter ((~~11.98A~~)) 11.98B RCW;

(d) The grant to a personal representative or trustee of any necessary or desirable power not otherwise granted in the governing instrument or given by law;

(e) An action or proceeding under chapter 11.84 RCW;

(f) The amendment, reformation, or conformation of a will or a trust instrument to comply with statutes and regulations of the United States internal revenue service in order to achieve qualification for deductions, elections, and other tax requirements, including the qualification of any gift thereunder for the benefit of a surviving spouse who is not a citizen of the United States for the estate tax marital deduction permitted by federal law, including the addition of mandatory governing instrument requirements for a qualified domestic trust under section 2056A of the internal revenue code, the qualification of any gift thereunder as a qualified conservation easement as permitted by federal law, or the qualification of any gift for the charitable estate tax deduction permitted by federal law, including the addition of mandatory governing instrument requirements for a charitable remainder trust;

(g) With respect to any nonprobate asset, or with respect to any other asset or property interest passing at death, including joint tenancy property, property subject to a community property agreement, or assets subject to a pay on death or transfer on death designation:

(i) The ascertaining of any class of creditors or others for purposes of chapter 11.18 or 11.42 RCW;

(ii) The ordering of a qualified person, the notice agent, or resident agent, as those terms are defined in chapter 11.42 RCW, or any combination of them, to do or abstain from doing any particular act with respect to a nonprobate asset;

(iii) The ordering of a custodian of any of the decedent's records relating to a nonprobate asset to do or abstain from doing any particular act with respect to those records;

(iv) The determination of any question arising in the administration under chapter 11.18 or 11.42 RCW of a nonprobate asset;

(v) The determination of any questions relating to the abatement, rights of creditors, or other matter relating to the administration, settlement, or final disposition of a nonprobate asset under this title;

(vi) The resolution of any matter referencing this chapter, including a determination of any questions relating to the ownership or distribution of an individual retirement account on the death of the spouse of the account holder as contemplated by RCW 6.15.020(6);

(vii) The resolution of any other matter that could affect the nonprobate asset; ((~~and~~))

(h) With respect to any custodianship under a uniform transfers to minors act, the determination of any issues subject to court determination under chapter 11.114 RCW; and

(i) The reformation of a will or trust to correct a mistake under RCW 11.96A.125.

(3) "Nonprobate assets" has the meaning given in RCW 11.02.005.

(4) "Notice agent" has the meanings given in RCW 11.42.010.

(5) "Party" or "parties" means ((~~each of the following persons who has an interest in the subject of the particular proceeding and whose name and address are known to, or are reasonably ascertainable by, the petitioner:~~

~~(a) The trustor if living;~~

~~(b) The trustee;~~

~~(c) The personal representative;~~

~~(d) An heir;~~

~~(e) A beneficiary, including devisees, legatees, and trust beneficiaries;~~

~~(f) The surviving spouse or surviving domestic partner of a decedent with respect to his or her interest in the decedent's property;~~

~~(g) A guardian ad litem;~~

~~(h) A creditor;~~

~~(i) Any other person who has an interest in the subject of the particular proceeding;~~

~~(j) The attorney general if required under RCW 11.110.120;~~

~~(k) Any duly appointed and acting legal representative of a party such as a guardian, special representative, or attorney-in-fact;~~

~~(l) Where applicable, the virtual representative of any person described in this subsection the giving of notice to whom would meet notice requirements as provided in RCW 11.96A.120;~~

~~(m) Any notice agent, resident agent, or a qualified person, as those terms are defined in chapter 11.42 RCW;~~

~~(n) The owner or the personal representative of the estate of the deceased owner of the nonprobate asset that is the subject of the particular proceeding, if the subject of the particular proceeding relates to the beneficiary's liability to a decedent's estate or creditors under RCW 11.18.200; and~~

~~(o) A statutory trust advisor or directed trustee of a directed trust under chapter 11.98A RCW~~)) any person who has a legal or equitable interest in, or who holds a power or a claim with respect to, the subject of a matter. Each of the terms "party" or "parties" must be construed liberally in its context to fulfill the purposes of the procedural rules contained in this chapter as supplemented by the court rules and to promote justice, without creating new substantive rights that do not otherwise exist under the laws of this state or principles of equity, and may include without limitation the following:

(a) With respect to any property held subject to a revocable trust:

(i) Each trustee of the property subject to the trust; and

(ii) Each trustor who transferred the property;

(b) With respect to any property held subject to an irrevocable trust:

(i) Each trustee of the trust holding the property;

(ii) Each qualified beneficiary, as defined in RCW 11.98.002, of the property subject to the trust and any other beneficiary whose interest is protected under the constitutional principles of due process; and

(iii) Each holder of a power relating to the property;

(c) With respect to any testate property:

(i) Each personal representative appointed to execute the will governing that property;

(ii) Each devisee or legatee of that testate property;

(iii) Each holder of a power relating to the testate property following the testator's death; and

(iv) Each creditor whose claim has been established by allowance or judgment;

(d) With respect to any intestate property:

(i) Each personal representative appointed to administer that property;

(ii) Each heir of the decedent who owned that property;

(iii) Each holder of a power relating to the intestate property following the owner's death; and

(iv) Each creditor whose claim has been established by allowance or judgment;

(e) With respect to any nonprobate asset, or with respect to any other asset or property interest passing at death, including joint tenancy property, property subject to a community property agreement, or assets subject to a pay on death or transfer on death designation:

(i) Each custodian of the property;

(ii) Each transferee and beneficiary of the property; and

(iii) Each qualified person, the notice agent, or resident agent, as those terms are defined in chapter 11.42 RCW;

(f) With respect to any custodial property subject to a uniform transfers to minors act:

(i) Each custodian of the custodial property;

(ii) The minor, as defined in RCW 11.114.010, for whose benefit the custodian holds the custodial property; and

(iii) Each other person who holds a power under chapter 11.114 RCW to act on behalf of the minor;

(g) With respect to any community property, each spouse;

(h) With respect to a matter relating to the powers and duties of a trust director or a directed trustee, or both:

(i) Each trust director with an interest in the matter;

(ii) Each directed trustee;

(iii) Each beneficiary, holder of a power, or other person whose interest or power is affected by the matter and is protected under the constitutional principles of due process;

(i) Each creditor whose claim has been allowed but has not been paid;

(j) The attorney general to the extent that the attorney general is a necessary and proper party under RCW 11.110.120 and corresponding common law;

(k) Each person who claims a legal right, title, or interest in property being subjected to probate or trust administration, nonprobate assets, other property passing at death, or custodial property, including without limitation the resolution of rights and duties under RCW 11.18.200 and questions relating to legal ownership or abatement; and

(l) When necessary, a party's representative or representatives, which may include without limitation guardians; custodians; guardians ad litem; special representatives; virtual representatives; attorneys in fact; fiduciaries; and notice agents, resident agents, and qualified persons, as those terms are defined in chapter 11.42 RCW.

(6) "Persons interested in the estate ((~~or trust" means the trustor, if living, all persons beneficially interested in the estate or trust, persons holding powers over the trust or estate assets, the attorney general in the case of any charitable trust where the attorney general would be a necessary party to judicial proceedings concerning the trust, and any personal representative or trustee of the estate or trust~~)), trust, nonprobate asset, other property passing at death, or custodial property" means all persons legally or beneficially interested in the estate, trust, nonprobate asset, other property passing at death, or custodial property; all persons holding powers with respect to the trust, estate, nonprobate asset, other property passing at death, or custodial property; the attorney general in the case of any charitable trust where the attorney general would be a necessary party to judicial proceedings concerning the trust; all fiduciaries of the estate, trust, nonprobate asset, or other property passing at death; and all custodians of custodial property.

(7) ((~~"Representative" and other similar terms refer to a person who virtually represents another under RCW 11.96A.120.~~

~~(8)~~)) "Trustee" means any acting and qualified trustee of the trust.

(8) "Virtual representative" and other similar terms refer to a person who virtually represents another under RCW 11.96A.120 or other applicable law.

**Sec.**  RCW 11.96A.110 and 2011 c 327 s 8 are each amended to read as follows:

(1) Subject to RCW 11.96A.160, in all judicial proceedings under this title that require notice, the notice must be personally served on or mailed to all parties or the parties' legal or virtual representatives and to any other persons to whom notice may be required under applicable law at least twenty days before the hearing on the petition unless a different period is provided by statute or ordered by the court. The date of service shall be determined under the rules of civil procedure. Notwithstanding the foregoing, notice that is provided in an electronic transmission and electronically transmitted complies with this section if the party receiving notice has previously consented in a record delivered to the party giving notice to receiving notice by electronic transmission. Consent to receive notice by electronic transmission may be revoked at any time by a record delivered to the party giving notice. Consent is deemed revoked if the party giving notice is unable to electronically transmit two consecutive notices given in accordance with the consent.

(2) Proof of the service, mailing, or electronic delivery required in this section must be made by affidavit or declaration filed at or before the hearing.

(3) For the purposes of this title, the terms "electronic transmission" and "electronically transmitted" have the same meaning as set forth in RCW 23B.01.400.

**Sec.**  RCW 11.96A.220 and 1999 c 42 s 402 are each amended to read as follows:

RCW 11.96A.210 through 11.96A.250 shall be applicable to the resolution of any matter, as defined by RCW 11.96A.030, other than matters subject to chapter 11.88 or 11.92 RCW, or a trust for a minor or other incapacitated person created at its inception by the judgment or decree of a court unless the judgment or decree provides that RCW 11.96A.210 through 11.96A.250 shall be applicable. If all parties agree to a resolution of any such matter, then the agreement shall be evidenced by a written agreement signed by all parties. Subject to the provisions of RCW 11.96A.240, the written agreement shall be binding and conclusive on all persons interested in the estate ((~~or~~)), trust, nonprobate asset, other property passing at death, or custodial property. The agreement shall identify the subject matter of the dispute and the parties. If the agreement or a memorandum of the agreement is to be filed with the court under RCW 11.96A.230, the agreement may, but need not, include provisions specifically addressing jurisdiction, governing law, the waiver of notice of the filing as provided in RCW 11.96A.230, and the discharge of any special representative who has acted with respect to the agreement.

If a party who virtually represents another under RCW 11.96A.120 signs the agreement, then the party's signature constitutes the signature of all persons whom the party virtually represents, and all the virtually represented persons shall be bound by the agreement.

**Sec.**  RCW 11.96A.220 and 2020 c 312 s 718 are each amended to read as follows:

RCW 11.96A.210 through 11.96A.250 shall be applicable to the resolution of any matter, as defined by RCW 11.96A.030, other than matters subject to chapter 11.130 RCW, or a trust for a minor or other incapacitated person created at its inception by the judgment or decree of a court unless the judgment or decree provides that RCW 11.96A.210 through 11.96A.250 shall be applicable. If all parties agree to a resolution of any such matter, then the agreement shall be evidenced by a written agreement signed by all parties. Subject to the provisions of RCW 11.96A.240, the written agreement shall be binding and conclusive on all persons interested in the estate ((~~or~~)), trust, nonprobate asset, other property passing at death, or custodial property. The agreement shall identify the subject matter of the dispute and the parties. If the agreement or a memorandum of the agreement is to be filed with the court under RCW 11.96A.230, the agreement may, but need not, include provisions specifically addressing jurisdiction, governing law, the waiver of notice of the filing as provided in RCW 11.96A.230, and the discharge of any special representative who has acted with respect to the agreement.

If a party who virtually represents another under RCW 11.96A.120 signs the agreement, then the party's signature constitutes the signature of all persons whom the party virtually represents, and all the virtually represented persons shall be bound by the agreement.

**Sec.**  RCW 11.96A.230 and 2001 c 14 s 2 are each amended to read as follows:

(1) Any party, or a party's legal representative, may file the written agreement or a memorandum summarizing the written agreement with the court having jurisdiction over the estate or trust. The agreement or a memorandum of its terms may be filed within thirty days of the agreement's execution by all parties only with the written consent of the special representative. The agreement or a memorandum of its terms may be filed after a special representative has commenced a proceeding under RCW 11.96A.240 only after the court has determined that the special representative has adequately represented and protected the parties represented. Failure to complete any action authorized or required under this subsection does not cause the written agreement to be ineffective and the agreement is nonetheless binding and conclusive on all persons interested in the estate or trust.

(2) On filing the agreement or memorandum, the agreement will be deemed approved by the court and is equivalent to a final court order binding on all persons interested in the estate ((~~or~~)), trust, nonprobate asset, other property passing at death, or custodial property.

**Sec.**  RCW 11.98.900 and 1985 c 30 s 60 are each amended to read as follows:

(1) The provisions of RCW 11.98.130 through 11.98.160 are applicable to any instrument purporting to create a trust regardless of the date such instrument bears, unless it has been previously adjudicated in the courts of this state.

(2) To the extent that this chapter is in conflict with RCW 11.68.090, RCW 11.68.090 prevails.

**Sec.**  RCW 11.100.050 and 1985 c 30 s 72 are each amended to read as follows:

(1) The provisions of this chapter govern fiduciaries acting under wills, agreements, court orders, and other instruments effective before or after January 1, 1985.

(2) To the extent that this chapter is in conflict with RCW 11.68.090, RCW 11.68.090 prevails.

**Sec.**  RCW 11.104A.900 and 2002 c 345 s 602 are each amended to read as follows:

(1) In applying and construing chapter 345, Laws of 2002, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact similar laws.

(2) To the extent that this chapter is in conflict with RCW 11.68.090, RCW 11.68.090 prevails.

**Sec.**  RCW 11.114.020 and 2006 c 204 s 2 are each amended to read as follows:

(1) This chapter applies to a transfer that refers to this chapter in the designation under RCW 11.114.090(1) by which the transfer is made if at the time of the transfer, the transferor, the minor, or the custodian is a resident of this state or the custodial property is located in this state. The custodianship so created remains subject to this chapter despite a subsequent change in residence of a transferor, the minor, or the custodian, or the removal of custodial property from this state.

(2) A person designated as custodian under this chapter is subject to personal jurisdiction in this state with respect to any matter relating to the custodianship.

(3) A transfer that purports to be made and which is valid under the uniform transfers to minors act, the uniform gifts to minors act, or a substantially similar act of another state is governed by the law of the designated state and may be executed and is enforceable in this state if at the time of the transfer, the transferor, the minor, or the custodian is a resident of the designated state or the custodial property is located in the designated state.

(4) A matter, whether at law or in equity, involving an account established under this chapter ((~~subject to court determination is governed by the procedures provided in RCW 11.96A.080 through 11.96A.200. However, no guardian ad litem is required for the minor, except under RCW 11.114.190(1), in the case of a petition by an unrepresented minor under the age of eighteen years~~)) shall be addressed, resolved, and settled under the procedures provided under chapter 11.96A RCW.

NEW SECTION. **Sec.**  (1) Sections 4003 through 4017, 4023, and 4024 of this act apply to all probate estates, regardless of whether the probate action commenced before or after the effective date of this section.

(2) Section 4026 of this act applies to all accounts established under chapter 11.114 RCW, regardless of whether the account was established before or after the effective date of this section.

NEW SECTION. **Sec.**  Section 4020 of this act expires January 1, 2022.

NEW SECTION. **Sec.**  Section 4021 of this act takes effect January 1, 2022.

**--- END ---**