

CERTIFICATION OF ENROLLMENT

SENATE BILL 5132

67th Legislature
2021 Regular Session

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**

Approved

Governor of the State of Washington

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

FILED

**Secretary of State
State of Washington**

SENATE BILL 5132

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

Prefiled 01/08/21. Read first time 01/11/21. Referred to Committee on Law & Justice.

1 AN ACT Relating to trusts and estates; amending RCW 11.02.005,
2 11.12.020, 11.12.040, 11.20.020, 11.20.070, 30B.24.005, 11.12.110,
3 11.12.120, 11.95.110, 11.95.120, 11.95.130, 11.95.140, 11.95.150,
4 11.97.010, 11.97.900, 11.40.140, 11.48.120, 11.48.130, 11.68.041,
5 11.68.050, 11.68.065, 11.68.070, 11.68.090, 11.68.095, 11.68.100,
6 11.68.110, 11.68.112, 11.68.114, 11.68.120, 11.96A.030, 11.96A.110,
7 11.96A.220, 11.96A.220, 11.96A.230, 11.98.900, 11.100.050,
8 11.104A.900, and 11.114.020; adding new sections to chapter 11.12
9 RCW; adding new sections to chapter 11.68 RCW; adding new chapters to
10 Title 11 RCW; creating a new section; recodifying RCW 11.104A.901,
11 11.104A.907, 11.95.100, 11.95.110, 11.95.120, 11.95.130, 11.95.140,
12 and 11.95.150; repealing RCW 11.104A.001, 11.104A.005, 11.104A.010,
13 11.104A.020, 11.104A.030, 11.104A.040, 11.104A.050, 11.104A.060,
14 11.104A.070, 11.104A.080, 11.104A.090, 11.104A.100, 11.104A.110,
15 11.104A.120, 11.104A.130, 11.104A.140, 11.104A.150, 11.104A.160,
16 11.104A.170, 11.104A.180, 11.104A.190, 11.104A.200, 11.104A.210,
17 11.104A.220, 11.104A.230, 11.104A.240, 11.104A.250, 11.104A.260,
18 11.104A.270, 11.104A.280, 11.104A.290, 11.104A.300, 11.104A.900,
19 11.104A.904, 11.104A.905, 11.104A.906, 11.95.010, 11.95.020,
20 11.95.030, 11.95.040, 11.95.060, 11.95.070, 11.95.160, and 11.95.900;
21 providing effective dates; and providing an expiration date.

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

1 **PART I**

2 **UNIFORM ELECTRONIC WILLS ACT**

3 NEW SECTION. **Sec. 1001.** SHORT TITLE. Sections 1002 through 1011
4 of this act may be known and cited as the uniform electronic wills
5 act.

6 NEW SECTION. **Sec. 1002.** DEFINITION. The definition in this
7 section applies throughout sections 1001 through 1011 of this act
8 unless the context clearly requires otherwise.

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

12 NEW SECTION. **Sec. 1003.** LAW APPLICABLE TO ELECTRONIC WILL;
13 PRINCIPLES OF EQUITY. An electronic will is a will for all purposes
14 of the law of this state. The law of this state applicable to wills
15 and principles of equity apply to an electronic will, except as
16 modified by sections 1001 through 1011 of this act.

17 NEW SECTION. **Sec. 1004.** CHOICE OF LAW REGARDING EXECUTION. A
18 will executed electronically but not in compliance with section
19 1005(1) of this act is an electronic will under sections 1001 through
20 1011 of this act if executed in compliance with the law of the
21 jurisdiction where the testator is:

- 22 (1) Physically located when the will is signed; or
23 (2) Domiciled or resides when the will is signed or when the
24 testator dies.

25 NEW SECTION. **Sec. 1005.** EXECUTION OF ELECTRONIC WILL. (1)
26 Subject to section 1006(4) of this act, an electronic will must be:

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

29 (b) Signed by:

30 (i) The testator; or

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

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

- 1 (i) The signing of the will under (b) of this subsection; or
- 2 (ii) The testator's acknowledgment of the signing of the will
- 3 under (b) of this subsection or acknowledgment of the will.

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

7 NEW SECTION. **Sec. 1006.** ELECTRONIC WILL ATTESTED AND MADE SELF-
8 PROVING AT TIME OF EXECUTION. (1) An electronic will may be
9 simultaneously executed, attested, and made self-proving if:

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

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

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

17 (a) Made before an officer authorized to administer oaths or, if
18 fewer than two attesting witnesses are physically present in the same
19 location as the testator at the time of signing under section
20 1005(1)(b) of this act, before an officer authorized under RCW
21 42.45.280; and

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

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

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

33 (signature)
34 Testator

35 We, (name) and (name), witnesses, being sworn,
36 declare to the undersigned officer that the testator signed this
37 instrument as the testator's electronic will, that the testator
38 willingly signed it or willingly directed another individual to sign
39 for the testator, and that each of us, in the physical or electronic

1 presence of the testator, signs this instrument as witness to the
2 testator's signing, and to the best of our knowledge the testator is
3 18 years of age or older, of sound mind, and under no constraint or
4 undue influence.

5 (signature)

6 Witness

7 (signature)

8 Witness

9 Certificate of officer:

10 State of

11 County of

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

15 (Seal)

16 (Signed)

17

18 (Capacity of officer)

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

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

29 (signature)

30 Testator

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

1 (signature)

2 Witness

3 (signature)

4 Witness

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

10 NEW SECTION. **Sec. 1007.** QUALIFIED CUSTODIAN OF ELECTRONIC WILL.

11 (1) The following may serve as a qualified custodian:

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

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

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

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

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

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

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

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

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

35 NEW SECTION. **Sec. 1008.** DUTY OF QUALIFIED CUSTODIAN OF

36 ELECTRONIC WILL. (1) The qualified custodian of an electronic will
37 shall, within 30 days after he or she receives knowledge of the death
38 of the testator:

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

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

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

15 NEW SECTION. **Sec. 1009.** CERTIFICATION OF PAPER COPY. An
16 individual may create a certified paper copy of an electronic will by
17 affirming under penalty of perjury that a paper copy of the
18 electronic will is a complete, true, and accurate copy of the
19 electronic will. If the electronic will is made self-proving, the
20 certified paper copy of the will must include the self-proving
21 affidavits.

22 NEW SECTION. **Sec. 1010.** UNIFORMITY OF APPLICATION AND
23 CONSTRUCTION. In applying and construing this uniform act,
24 consideration must be given to the need to promote uniformity of the
25 law with respect to its subject matter among states that enact it.

26 NEW SECTION. **Sec. 1011.** TRANSITIONAL PROVISION. Sections 1001
27 through 1010 of this act apply to the electronic will of a decedent
28 who dies on or after the effective date of this section.

29 **Sec. 1012.** RCW 11.02.005 and 2020 c 312 s 708 are each amended
30 to read as follows:

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

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

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

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

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

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

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

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

21 ~~((5))~~ (8) "Guardian," "limited guardian," "conservator," or
22 "limited conservator" means a personal representative of the person
23 or estate of a person who has been placed under a guardianship under
24 RCW 11.130.265 or who has been placed under a conservatorship under
25 RCW 11.130.360 and the term may be used in lieu of "personal
26 representative" wherever required by context.

27 ~~((6))~~ (9) "Heirs" denotes those persons, including the
28 surviving spouse or surviving domestic partner, who are entitled
29 under the statutes of intestate succession to the real and personal
30 property of a decedent on the decedent's death intestate.

31 ~~((7))~~ (10) "Internal revenue code" means the United States
32 internal revenue code of 1986, as amended or renumbered as of January
33 1, 2001.

34 ~~((8))~~ (11) "Issue" means all the lineal descendants of an
35 individual. An adopted individual is a lineal descendant of each of
36 his or her adoptive parents and of all individuals with regard to
37 which each adoptive parent is a lineal descendant. A child conceived
38 prior to the death of a parent but born after the death of the
39 deceased parent is considered to be the surviving issue of the
40 deceased parent for purposes of this title.

1 (~~(9)~~) (12) "Net estate" refers to the real and personal
2 property of a decedent exclusive of homestead rights, exempt
3 property, the family allowance and enforceable claims against, and
4 debts of, the deceased or the estate.

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

32 (~~(11)~~) (14) "Personal representative" includes executor,
33 administrator, special administrator, and conservator or limited
34 conservator and special representative.

35 (~~(12)~~) (15) "Real estate" includes, except as otherwise
36 specifically provided herein, all lands, tenements, and
37 hereditaments, and all rights thereto, and all interest therein
38 possessed and claimed in fee simple, or for the life of a third
39 person.

1 ~~((13))~~ (16) "Record" means information that is inscribed on a
2 tangible medium or that is stored in an electronic or other medium
3 and is retrievable in perceivable form.

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

19 ~~((14))~~ (18) References to "section 2033A" of the internal
20 revenue code in wills, trust agreements, powers of appointment,
21 beneficiary designations, and other instruments governed by or
22 subject to this title are deemed to refer to the comparable or
23 corresponding provisions of section 2057 of the internal revenue
24 code, as added by section 6006(b) of the internal revenue service
25 restructuring act of 1998 (H.R. 2676, P.L. 105-206); and references
26 to the section 2033A "exclusion" are deemed to mean the section 2057
27 deduction.

28 ~~((15))~~ (19) "Settlor" has the same meaning as provided for
29 "trustor" in this section.

30 ~~((16))~~ (20) "Special administrator" means a personal
31 representative of the estate of a decedent appointed for limited
32 purposes and the term may be used in lieu of "personal
33 representative" wherever required by context.

34 ~~((17))~~ (21) "Surviving spouse" or "surviving domestic partner"
35 does not include an individual whose marriage to or state registered
36 domestic partnership with the decedent has been terminated,
37 dissolved, or invalidated unless, by virtue of a subsequent marriage
38 or state registered domestic partnership, he or she is married to or
39 in a domestic partnership with the decedent at the time of death. A
40 decree of separation that does not terminate the status of spouses or

1 domestic partners is not a dissolution or invalidation for purposes
2 of this subsection.

3 ~~((18))~~ (22) "Trustee" means an original, added, or successor
4 trustee and includes the state, or any agency thereof, when it is
5 acting as the trustee of a trust to which chapter 11.98 RCW applies.

6 ~~((19))~~ (23) "Trustor" means a person, including a testator, who
7 creates, or contributes property to, a trust.

8 ~~((20))~~ (24) "Will" means an instrument validly executed as
9 required by RCW 11.12.020 or sections 1001 through 1011 of this act.

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

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

14 **Sec. 1013.** RCW 11.12.020 and 1990 c 79 s 1 are each amended to
15 read as follows:

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

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

36 **Sec. 1014.** RCW 11.12.040 and 1994 c 221 s 12 are each amended to
37 read as follows:

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

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

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

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

13 **Sec. 1015.** RCW 11.20.020 and 2010 c 8 s 2016 are each amended to
14 read as follows:

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

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

1 NEW SECTION. **Sec. 2101.** SHORT TITLE. This chapter may be known
2 and cited as the uniform fiduciary income and principal act.

3 NEW SECTION. **Sec. 2102.** DEFINITIONS. The definitions in this
4 section apply throughout this chapter unless the context clearly
5 requires otherwise.

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

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

19 (3) "Beneficiary" includes:

20 (a) For a trust:

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

23 (ii) A remainder beneficiary; and

24 (iii) Any other successor beneficiary; and

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

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

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

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

37 (7) "Estate" means a decedent's estate. The term includes the
38 property of the decedent as the estate is originally constituted and

1 the property of the estate as it exists at any time during
2 administration.

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

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

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

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

21 (a) For a trust:

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

28 (ii) A settlor of the trust; or

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

31 (b) For an estate, a beneficiary;

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

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

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

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

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

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

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

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

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

27 (18) "Settlor" means a person, including a testator, that creates
28 or contributes property to a trust. If more than one person creates
29 or contributes property to a trust, the term includes each person, to
30 the extent of the trust property attributable to that person's
31 contribution, except to the extent another person has the power to
32 revoke or withdraw that portion.

33 (19) "Special tax benefit" means:

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

39 (b) Status as a qualified subchapter S trust described in 26
40 U.S.C. Sec. 1361(d)(3) of the federal internal revenue code of 1986,

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

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

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

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

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

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

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

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

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

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

38 (22) "Terms of a trust" means:

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

4 (i) Expressed in the trust instrument; or
5 (ii) Established by other evidence that would be admissible in a
6 judicial proceeding;

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

9 (i) A trustee or trust director in accordance with applicable
10 law;
11 (ii) Court order; or
12 (iii) A nonjudicial settlement agreement under chapter 11.98A
13 RCW; or

14 (c) For an estate, a will.

15 (23) "Trust":
16 (a) Includes:
17 (i) An express trust, private or charitable, with additions to
18 the trust, wherever and however created; and
19 (ii) A trust created or determined by judgment or decree under
20 which the trust is to be administered in the manner of an express
21 trust; and
22 (b) Does not include:
23 (i) A constructive trust;
24 (ii) A resulting trust, conservatorship, guardianship, multiparty
25 account, custodial arrangement for a minor, business trust, voting
26 trust, security arrangement, liquidation trust, or trust for the
27 primary purpose of paying debts, dividends, interest, salaries,
28 wages, profits, pensions, retirement benefits, or employee benefits
29 of any kind; or
30 (iii) An arrangement under which a person is a nominee, escrowee,
31 or agent for another.

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

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

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

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

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

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

17 (3) A fiduciary shall:

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

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

24 (4) A fiduciary may exercise the power to adjust under section
25 2203 of this act, convert an income trust to a unitrust under section
26 2303(1)(a) of this act, change the percentage or method used to
27 calculate a unitrust amount under section 2303(1)(b) of this act, or
28 convert a unitrust to an income trust under section 2303(1)(c) of
29 this act, if the fiduciary determines the exercise of the power is
30 necessary to administer the trust or estate in accordance with the
31 requirements of subsection (1) of this section.

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

34 (a) The terms of the trust;

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

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

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

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

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

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

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

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

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

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

16 NEW SECTION. **Sec. 2202.** JUDICIAL REVIEW OF EXERCISE OF
17 DISCRETIONARY POWER—REQUEST FOR INSTRUCTION. (1) In this section,
18 "fiduciary decision" means:

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

22 (b) The fiduciary's exercise or nonexercise of a discretionary
23 power regarding income and principal granted by the terms of the
24 trust or this chapter, including the power to adjust under section
25 2203 of this act, convert an income trust to a unitrust under section
26 2303(1)(a) of this act, change the percentage or method used to
27 calculate a unitrust amount under section 2303(1)(b) of this act, or
28 convert a unitrust to an income trust under section 2303(1)(c) of
29 this act; or

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

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

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

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

3 (b) The fiduciary to exercise or refrain from exercising the
4 power to convert an income trust to a unitrust under section
5 2303(1)(a) of this act, change the percentage or method used to
6 calculate a unitrust amount under section 2303(1)(b) of this act, or
7 convert a unitrust to an income trust under section 2303(1)(c) of
8 this act;

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

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

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

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

22 NEW SECTION. **Sec. 2203.** FIDUCIARY'S POWER TO ADJUST. (1) Except
23 as otherwise provided in the terms of a trust or this section, a
24 fiduciary, in a record, without court approval, may adjust between
25 income and principal if the fiduciary determines the exercise of the
26 power to adjust is necessary to administer the trust or estate in
27 accordance with the requirements of section 2201(1) of this act.

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

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

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

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

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

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

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

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

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

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

25 (g) The fiduciary is not an independent person;

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

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

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

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

38 (b) If there is no cofiduciary to which subsection (5)(d) through
39 (g) of this section does not apply, the fiduciary may appoint a
40 cofiduciary to which subsection (5)(d) through (g) of this section

1 does not apply, which may be a special fiduciary with limited powers,
2 and the appointed cofiduciary may exercise the power to adjust under
3 subsection (1) of this section, unless the appointment of a
4 cofiduciary or the exercise of the power by a cofiduciary is not
5 permitted by the terms of the trust or law other than this chapter.

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

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

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

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

17 (a) Must be in a record;

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

21 (i) From income to principal;

22 (ii) From principal to income;

23 (iii) For specified property; or

24 (iv) In specified circumstances;

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

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

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

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

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

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

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

9 **ARTICLE 3**

10 **UNITRUST**

11 NEW SECTION. **Sec. 2301.** DEFINITIONS. The definitions in this
12 section apply throughout this article unless the context clearly
13 requires otherwise.

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

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

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

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

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

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

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

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

34 NEW SECTION. **Sec. 2302.** APPLICATION—DUTIES AND REMEDIES. (1)
35 Except as otherwise provided in subsection (2) of this section, this
36 article applies to:

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

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

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

9 (ii) Prohibit conversion to an income trust; or

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

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

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

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

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

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

33 NEW SECTION. **Sec. 2303.** AUTHORITY OF FIDUCIARY. (1) A
34 fiduciary, without court approval, by complying with subsections (2)
35 and (6) of this section, may:

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

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

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

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

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

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

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

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

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

24 (i) If an individual, living; or

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

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

28 (i) If an individual, legally competent;

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

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

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

36 (3) If a fiduciary receives, not later than the date stated in
37 the notice under section 2304(3)(e) of this act, an objection in a
38 record described in section 2304(3)(d) of this act to a proposed
39 action, the fiduciary or a beneficiary may request the court to have
40 the proposed action taken as proposed, taken with modifications, or

1 prevented. A person described in section 2304(1) of this act may
2 oppose the proposed action in the proceeding under this subsection,
3 whether or not the person:

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

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

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

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

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

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

29 NEW SECTION. **Sec. 2304.** NOTICE. (1) A notice required by
30 section 2303(2)(b) of this act must be sent to:

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

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

38 (i) Including a:

1 (A) Power over the investment, management, or distribution of
2 trust property or other matters of trust administration; and
3 (B) Power to appoint or remove a trustee or person described in
4 this subsection; and
5 (ii) Excluding a:
6 (A) Power of appointment;
7 (B) Power of a beneficiary over the trust, to the extent the
8 exercise or nonexercise of the power affects the beneficial interest
9 of the beneficiary; and
10 (C) Power over the trust if the terms of the trust provide that
11 the power is held in a nonfiduciary capacity and the power must be
12 held in a nonfiduciary capacity to achieve a tax objective under the
13 federal internal revenue code of 1986, as amended, as of the
14 effective date of this section.
15 (2) A person may consent in a record at any time to action
16 proposed under section 2303(2)(b) of this act. A notice required by
17 section 2303(2)(b) of this act need not be sent to a person that
18 consents under this subsection.
19 (3) A notice required by section 2303(2)(b) of this act must
20 include:
21 (a) The action proposed under section 2303(2)(b) of this act;
22 (b) For a conversion of an income trust to a unitrust, a copy of
23 the unitrust policy adopted under section 2303(1)(a) of this act;
24 (c) For a change in the percentage or method used to calculate
25 the unitrust amount, a copy of the unitrust policy or amendment or
26 replacement of the unitrust policy adopted under section 2303(1)(b)
27 of this act;
28 (d) A statement that the person to which the notice is sent may
29 object to the proposed action by stating in a record the basis for
30 the objection and sending or delivering the record to the fiduciary;
31 (e) The date by which an objection under (d) of this subsection
32 (3) must be received by the fiduciary, which must be at least 30 days
33 after the date the notice is sent;
34 (f) The date on which the action is proposed to be taken and the
35 date on which the action is proposed to take effect;
36 (g) The name and contact information of the fiduciary; and
37 (h) The name and contact information of a person that may be
38 contacted for additional information.

1 NEW SECTION. **Sec. 2305.** UNITRUST POLICY. (1) In administering a
2 unitrust under this article, a fiduciary shall follow a unitrust
3 policy adopted under section 2303(1) (a) or (b) of this act or
4 amended or replaced under section 2303(1)(b) of this act.

5 (2) A unitrust policy must provide:

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

8 (b) The method for determining the applicable value under section
9 2307 of this act; and

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

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

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

18 NEW SECTION. **Sec. 2306.** UNITRUST RATE. (1) Except as otherwise
19 provided in section 2309(2)(a) of this act, a unitrust rate may be:

20 (a) A fixed unitrust rate; or

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

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

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

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

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

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

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

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

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

4 NEW SECTION. **Sec. 2307.** APPLICABLE VALUE. (1) A unitrust policy
5 must provide the method for determining the fair market value of an
6 asset for the purpose of determining the unitrust amount, including:

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

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

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

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

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

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

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

22 (e) Use of:

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

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

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

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

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

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

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

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

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

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

6 NEW SECTION. **Sec. 2308.** PERIOD. (1) A unitrust policy must
7 provide the period used under sections 2306 and 2307 of this act.
8 Except as otherwise provided in section 2309(2)(c) of this act, the
9 period may be:

- 10 (a) A calendar year;
- 11 (b) A 12-month period other than a calendar year;
- 12 (c) A calendar quarter;
- 13 (d) A three-month period other than a calendar quarter; or
- 14 (e) Another period.

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

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

- 19 (i) The trust was not in existence in a preceding period; or
- 20 (ii) Market indices or other published data are not available for
21 a preceding period;

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

- 24 (i) The trust was not in existence in a preceding period; or
- 25 (ii) Fair market values are not available for a preceding period;

26 and

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

30 NEW SECTION. **Sec. 2309.** SPECIAL TAX BENEFITS—OTHER RULES. (1) A
31 unitrust policy may:

32 (a) Provide methods and standards for:

- 33 (i) Determining the timing of distributions;
- 34 (ii) Making distributions in cash or in-kind or partly in cash
35 and partly in-kind; or

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

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

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

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

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

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

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

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

16 **ARTICLE 4**

17 **ALLOCATION OF RECEIPTS**

18 **SUBARTICLE 1**

19 **RECEIPTS FROM ENTITY**

20 NEW SECTION. **Sec. 2401.** CHARACTER OF RECEIPTS FROM ENTITY. (1)

21 The definitions in this subsection apply throughout this section
22 unless the context clearly requires otherwise.

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

25 (i) Return of capital; or

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

27 (b) "Entity":

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

33 (ii) Does not include:

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

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

38 (C) An asset-backed security; or

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

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

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

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

12 (a) Money received in an entity distribution; and

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

15 (4) A fiduciary shall allocate to principal:

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

17 (i) Money; or

18 (ii) Tangible personal property of nominal value;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 (i) The entity distribution; or

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

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

24 (i) The entity's operating income;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 NEW SECTION. **Sec. 2402.** DISTRIBUTION FROM TRUST OR ESTATE. A
26 fiduciary shall allocate to income an amount received as a
27 distribution of income, including a unitrust distribution under
28 article 3 of this chapter, from a trust or estate in which the
29 fiduciary has an interest, other than an interest the fiduciary
30 purchased in a trust that is an investment entity, and shall allocate
31 to principal an amount received as a distribution of principal from
32 the trust or estate. If a fiduciary purchases, or receives from a
33 settlor, an interest in a trust that is an investment entity, section
34 2401, 2415, or 2416 of this act applies to a receipt from the trust.

35 NEW SECTION. **Sec. 2403.** BUSINESS OR OTHER ACTIVITY CONDUCTED BY
36 FIDUCIARY. (1) This section applies to a business or other activity
37 conducted by a fiduciary if the fiduciary determines that it is in

1 the interests of the beneficiaries to account separately for the
2 business or other activity instead of:

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

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

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

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

13 (a) May determine:

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

16 (A) Working capital;

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

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

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

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

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

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

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

36 (b) Farming;

37 (c) Raising and selling livestock and other animals;

38 (d) Managing rental properties;

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

40 (f) Growing and cutting timber;

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

3 (h) Any other business conducted by the fiduciary.

4 **SUBARTICLE 2**

5 **RECEIPTS NOT NORMALLY APPORTIONED**

6 NEW SECTION. **Sec. 2404.** PRINCIPAL RECEIPTS. A fiduciary shall
7 allocate to principal:

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

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

11 (b) An estate;

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

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

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

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

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

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

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

30 NEW SECTION. **Sec. 2405.** RENTAL PROPERTY. To the extent a
31 fiduciary does not account for the management of rental property as a
32 business under section 2403 of this act, the fiduciary shall allocate
33 to income an amount received as rent of real or personal property,
34 including an amount received for cancellation or renewal of a lease.
35 An amount received as a refundable deposit, including a security
36 deposit or a deposit that is to be applied as rent for future
37 periods:

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

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

7 NEW SECTION. **Sec. 2406.** RECEIPT ON OBLIGATION TO BE PAID IN
8 MONEY. (1) This section does not apply to an obligation to which
9 section 2409, 2410, 2411, 2412, 2414, 2415, or 2416 of this act
10 applies.

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

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

22 NEW SECTION. **Sec. 2407.** INSURANCE POLICY OR CONTRACT. (1) This
23 section does not apply to a contract to which section 2409 of this
24 act applies.

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

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

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

36 (b) Income; or

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

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

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

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

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

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

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

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

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

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

38 (4) The fiduciary of a marital trust shall:

39 (a) Withdraw from a separate fund the amount the current income
40 beneficiary of the trust requests the fiduciary to withdraw, not

1 greater than the amount by which the internal income of the separate
2 fund during the accounting period exceeds the amount the fiduciary
3 otherwise receives from the separate fund during the period;

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

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

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

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

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

21 NEW SECTION. **Sec. 2410.** LIQUIDATING ASSET. (1) In this section,
22 "liquidating asset" means an asset whose value will diminish or
23 terminate because the asset is expected to produce receipts for a
24 limited time. The term includes a leasehold, patent, copyright,
25 royalty right, and right to receive payments during a period of more
26 than one year under an arrangement that does not provide for the
27 payment of interest on the unpaid balance.

28 (2) This section does not apply to a receipt subject to section
29 2401, 2409, 2411, 2412, 2414, 2415, 2416, or 2503 of this act.

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

32 NEW SECTION. **Sec. 2411.** MINERALS, WATER, AND OTHER NATURAL
33 RESOURCES. (1) To the extent a fiduciary accounts for a receipt from
34 an interest in minerals, water, or other natural resources pursuant
35 to this section, the fiduciary shall allocate the receipt:

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

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

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

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

12 (2) An amount received on account of an interest in water that is
13 renewable must be allocated to income. If the water is not renewable,
14 90 percent of the amount must be allocated to principal and the
15 balance to income.

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

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

26 NEW SECTION. **Sec. 2412.** TIMBER. (1) To the extent a fiduciary
27 does not account for receipts from the sale of timber and related
28 products as a business under section 2403 of this act, the fiduciary
29 shall allocate the net receipts:

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

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

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

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

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

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

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

19 NEW SECTION. **Sec. 2413.** MARITAL DEDUCTION PROPERTY NOT
20 PRODUCTIVE OF INCOME. (1) If a trust received property for which a
21 gift or estate tax marital deduction was allowed and the settlor's
22 spouse holds a mandatory income interest in the trust, the spouse may
23 require the trustee, to the extent the trust assets otherwise do not
24 provide the spouse with sufficient income from or use of the trust
25 assets to qualify for the deduction, to:

26 (a) Make property productive of income;

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

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

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

32 NEW SECTION. **Sec. 2414.** DERIVATIVE OR OPTION. (1) In this
33 section, "derivative" means a contract, instrument, other
34 arrangement, or combination of contracts, instruments, or other
35 arrangements, the value, rights, and obligations of which are, in
36 whole or in part, dependent on or derived from an underlying tangible
37 or intangible asset, group of tangible or intangible assets, index,
38 or occurrence of an event. The term includes stocks, fixed income

1 securities, and financial instruments and arrangements based on
2 indices, commodities, interest rates, weather-related events, and
3 credit default events.

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

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

9 (a) A fiduciary:

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

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

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

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

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

21 (a) An amount received for granting the option;

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

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

25 NEW SECTION. **Sec. 2415.** ASSET-BACKED SECURITY. (1) If a
26 fiduciary receives a payment from interest or other current return
27 and from other proceeds of the collateral financial assets, the
28 fiduciary shall allocate to income the portion of the payment which
29 the payer identifies as being from interest or other current return
30 and shall allocate the balance of the payment to principal.

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

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

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

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

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

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

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

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

19 (h) A payment:

20 (i) Related to environmental matters, including:

21 (A) Reclamation;

22 (B) Assessing environmental conditions;

23 (C) Remedying and removing environmental contamination;

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

25 (E) Preventing future releases of substances;

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

29 (G) Penalties imposed under environmental laws or regulations;

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

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

33 (J) Defending claims based on environmental matters; and

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

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

1 NEW SECTION. **Sec. 2503.** TRANSFER FROM INCOME TO PRINCIPAL FOR
2 DEPRECIATION. (1) In this section, "depreciation" means a reduction
3 in value due to wear, tear, decay, corrosion, or gradual obsolescence
4 of a tangible asset having a useful life of more than one year.

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

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

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

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

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

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

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

18 NEW SECTION. **Sec. 2504.** REIMBURSEMENT OF INCOME FROM PRINCIPAL.

19 (1) If a fiduciary makes or expects to make an income disbursement
20 described in subsection (2) of this section, the fiduciary may
21 transfer an appropriate amount from principal to income in one or
22 more accounting periods to reimburse income.

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

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

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

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

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

35 NEW SECTION. **Sec. 2505.** REIMBURSEMENT OF PRINCIPAL FROM INCOME.

36 (1) If a fiduciary makes or expects to make a principal disbursement
37 described in subsection (2) of this section, the fiduciary may
38 transfer an appropriate amount from income to principal in one or

1 more accounting periods to reimburse principal or provide a reserve
2 for future principal disbursements.

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

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

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

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

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

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

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

21 NEW SECTION. **Sec. 2506.** INCOME TAXES. (1) A tax required to be
22 paid by a fiduciary based on receipts allocated to income must be
23 charged to income.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

38 (4) If a decedent's will, the terms of a trust, or applicable law
39 provides for the payment of interest or the equivalent of interest to
40 a beneficiary that receives a pecuniary amount outright, the

1 fiduciary shall make the payment from net income determined under
2 subsection (3) of this section or from principal to the extent net
3 income is insufficient.

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

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

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

32 NEW SECTION. **Sec. 2602.** DISTRIBUTION TO SUCCESSOR BENEFICIARY.

33 (1) Except to the extent article 3 of this chapter applies for a
34 beneficiary that is a trust, each beneficiary described in section
35 2601(6) of this act is entitled to receive a share of the net income
36 equal to the beneficiary's fractional interest in undistributed
37 principal assets, using values as of the distribution date. If a
38 fiduciary makes more than one distribution of assets to beneficiaries
39 to which this section applies, each beneficiary, including a

1 beneficiary that does not receive part of the distribution, is
2 entitled, as of each distribution date, to a share of the net income
3 the fiduciary received after the decedent's death, an income
4 interest's other terminating event, or the preceding distribution by
5 the fiduciary.

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

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

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

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

17 (ii) Without regard to:

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

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

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

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

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

34 **ARTICLE 7**

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

36 NEW SECTION. **Sec. 2701.** WHEN RIGHT TO INCOME BEGINS AND ENDS.

37 (1) An income beneficiary is entitled to net income in accordance
38 with the terms of the trust from the date an income interest begins.

1 The income interest begins on the date specified in the terms of the
2 trust or, if no date is specified, on the date an asset becomes
3 subject to:

- 4 (a) The trust for the current income beneficiary; or
- 5 (b) A successive interest for a successor beneficiary.

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

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

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

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

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

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

26 NEW SECTION. **Sec. 2702.** APPORTIONMENT OF RECEIPTS AND
27 DISBURSEMENTS WHEN DECEDENT DIES OR INCOME INTEREST BEGINS. (1) A
28 fiduciary shall allocate an income receipt or disbursement, other
29 than a receipt to which section 2601(2) of this act applies, to
30 principal if its due date occurs before the date on which:

- 31 (a) For an estate, the decedent died; or
- 32 (b) For a trust or successive interest, an income interest
33 begins.

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

38 (3) If an income receipt or disbursement is not periodic or has
39 no due date, a fiduciary shall treat the receipt or disbursement

1 under this section as accruing from day to day. The fiduciary shall
2 allocate to principal the portion of the receipt or disbursement
3 accruing before the date on which a decedent died or an income
4 interest begins, and to income the balance.

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

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

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

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

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

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

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

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

22 NEW SECTION. **Sec. 2703.** APPORTIONMENT WHEN INCOME INTEREST
23 ENDS. (1) In this section, "undistributed income" means net income
24 received on or before the date on which an income interest ends. The
25 term does not include an item of income or expense which is due or
26 accrued or net income that has been added or is required to be added
27 to principal under the terms of the trust.

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

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

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

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

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

7 **ARTICLE 8**

8 **MISCELLANEOUS PROVISIONS**

9 NEW SECTION. **Sec. 2801.** UNIFORMITY OF APPLICATION AND
10 CONSTRUCTION. (1) In applying and construing this uniform act,
11 consideration must be given to the need to promote uniformity of the
12 law with respect to its subject matter among states that enact it.

13 (2) To the extent that this chapter is in conflict with RCW
14 11.68.090, RCW 11.68.090 prevails.

15 NEW SECTION. **Sec. 2802.** RELATION TO ELECTRONIC SIGNATURES IN
16 GLOBAL AND NATIONAL COMMERCE ACT. This chapter modifies, limits, or
17 supersedes the electronic signatures in global and national commerce
18 act, 15 U.S.C. Sec. 7001 et seq., but does not modify, limit, or
19 supersede section 101(c) of that act (15 U.S.C. Sec. 7001(c)) or
20 authorize electronic delivery of any of the notices described in
21 section 103(b) of that act (15 U.S.C. Sec. 7003(b)).

22 NEW SECTION. **Sec. 2803.** APPLICATION TO TRUST OR ESTATE. This
23 chapter applies to a trust or estate existing or created on or after
24 the effective date of this section, except as otherwise expressly
25 provided in the terms of the trust or sections 2101 through 2802 of
26 this act.

27 **Sec. 2804.** RCW 30B.24.005 and 2019 c 389 s 41 are each amended
28 to read as follows:

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

1 11.107, and 11.108 RCW, and with chapter 11.110 RCW, in the case of a
2 charitable trust.

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

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

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

12 (b) The applicable provisions of Title 11 RCW including, without
13 limitation, chapters 11.97, 11.98, 11.98A, 11.100, 11.102,
14 (~~11.104A~~) 11.--- (the new chapter created in section 2808 of this
15 act), 11.106, 11.107, and 11.108 RCW, and with chapter 11.110 RCW, in
16 the case of a charitable trust;

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

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

24 NEW SECTION. Sec. 2805. RECODIFICATIONS. RCW 11.104A.901 and
25 11.104A.907 are each recodified as sections in chapter 11.--- RCW
26 (the new chapter created in section 2808 of this act).

27 NEW SECTION. Sec. 2806. REPEALERS. The following acts or parts
28 of acts are each repealed:

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

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

31 (3) RCW 11.104A.010 (Fiduciary duties—General principles) and
32 2002 c 345 s 103;

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

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

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

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

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

5 (9) RCW 11.104A.070 (When right to income begins and ends) and
6 2002 c 345 s 301;

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

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

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

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

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

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

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

19 (17) RCW 11.104A.150 (Obligation to pay money) and 2002 c 345 s
20 406;

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

23 (19) RCW 11.104A.170 (Insubstantial allocations not required) and
24 2002 c 345 s 408;

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

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

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

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

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

33 (25) RCW 11.104A.230 (Derivatives and options) and 2002 c 345 s
34 414;

35 (26) RCW 11.104A.240 (Asset-backed securities) and 2002 c 345 s
36 415;

37 (27) RCW 11.104A.250 (Disbursements from income) and 2002 c 345 s
38 501;

39 (28) RCW 11.104A.260 (Disbursements from principal) and 2002 c
40 345 s 502;

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

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

5 (31) RCW 11.104A.290 (Income taxes) and 2011 c 33 s 1 & 2002 c
6 345 s 505;

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

9 (33) RCW 11.104A.900 (Uniformity of application and construction)
10 and 2021 c . . . s 4025 (section 4025 of this act) & 2002 c 345 s
11 602;

12 (34) RCW 11.104A.904 (Effective date—2002 c 345) and 2002 c 345 s
13 606;

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

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

17 NEW SECTION. **Sec. 2807.** SEVERABILITY. If any provision of
18 sections 2101 through 2806 of this act or its application to any
19 person or circumstance is held invalid, the remainder of the act or
20 the application of the provision to other persons or circumstances is
21 not affected.

22 NEW SECTION. **Sec. 2808.** CODIFICATION. Sections 2101 through
23 2803 and 2809 of this act constitute a new chapter in Title 11 RCW.

24 NEW SECTION. **Sec. 2809.** EFFECTIVE DATE. Sections 2101 through
25 2806 of this act take effect January 1, 2022.

26 **PART III**
27 **UNIFORM POWERS OF APPOINTMENT ACT**
28 **ARTICLE 1**
29 **GENERAL PROVISIONS**

30 NEW SECTION. **Sec. 3101.** SHORT TITLE. This chapter may be known
31 and cited as the uniform powers of appointment act.

32 NEW SECTION. **Sec. 3102.** DEFINITIONS. The definitions in this
33 section apply throughout this chapter unless the context clearly
34 requires otherwise.

- 1 (1) "Appointee" means a person to which a powerholder makes an
2 appointment of appointive property.
- 3 (2) "Appointive property" means the property or property interest
4 subject to a power of appointment.
- 5 (3) "Blanket-exercise clause" means a clause in an instrument
6 which exercises a power of appointment and is not a specific-exercise
7 clause. The term includes a clause that:
- 8 (a) Expressly uses the words "any power" in exercising any power
9 of appointment the powerholder has;
- 10 (b) Expressly uses the words "any property" in appointing any
11 property over which the powerholder has a power of appointment; or
- 12 (c) Disposes of all property subject to disposition by the
13 powerholder.
- 14 (4) "Donor" means a person that creates a power of appointment.
- 15 (5) "Exclusionary power of appointment" means a power of
16 appointment exercisable in favor of any one or more of the
17 permissible appointees to the exclusion of the other permissible
18 appointees.
- 19 (6) "General power of appointment" means a power of appointment
20 exercisable in favor of the powerholder, the powerholder's estate, a
21 creditor of the powerholder, or a creditor of the powerholder's
22 estate.
- 23 (7) "Gift-in-default clause" means a clause identifying a taker
24 in default of appointment.
- 25 (8) "Impermissible appointee" means a person that is not a
26 permissible appointee.
- 27 (9) "Instrument" means a record.
- 28 (10) "Nongeneral power of appointment" means a power of
29 appointment that is not a general power of appointment.
- 30 (11) "Permissible appointee" means a person in whose favor a
31 powerholder may exercise a power of appointment.
- 32 (12) "Person" means an individual, estate, trust, business or
33 nonprofit entity, public corporation, government or governmental
34 subdivision, agency, or instrumentality, or other legal entity.
- 35 (13) "Power of appointment" means a power that enables a
36 powerholder acting in a nonfiduciary capacity to designate a
37 recipient of an ownership interest in or another power of appointment
38 over the appointive property. The term does not include a power of
39 attorney.

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

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

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

9 (i) The occurrence of the specified event;

10 (ii) The satisfaction of the ascertainable standard; or

11 (iii) The passage of the specified time; and

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

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

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

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

24 NEW SECTION. **Sec. 3103.** GOVERNING LAW. Unless the terms of the
25 instrument creating a power of appointment manifest a contrary
26 intent:

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

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

34 NEW SECTION. **Sec. 3104.** COMMON LAW AND PRINCIPLES OF EQUITY.
35 The common law and principles of equity supplement this chapter,
36 except to the extent modified by this chapter or law of this state
37 other than this chapter.

1 **ARTICLE 2**

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

3 NEW SECTION. **Sec. 3201.** CREATION OF POWER OF APPOINTMENT. (1) A
4 power of appointment is created only if:

5 (a) The instrument creating the power:

6 (i) Is valid under applicable law; and

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

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

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

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

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

21 NEW SECTION. **Sec. 3202.** NONTRANSFERABILITY. A powerholder may
22 not transfer a power of appointment. If a powerholder dies without
23 exercising or releasing a power, the power lapses.

24 NEW SECTION. **Sec. 3203.** PRESUMPTION OF UNLIMITED AUTHORITY.
25 Subject to section 3205 of this act and RCW 11.95.100 (as recodified
26 by this act) through 11.95.150 (as recodified by this act), and
27 unless the terms of the instrument creating a power of appointment
28 manifest a contrary intent, the power is:

29 (1) Presently exercisable;

30 (2) Exclusionary; and

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

33 NEW SECTION. **Sec. 3204.** EXCEPTION TO PRESUMPTION OF UNLIMITED
34 AUTHORITY. Unless the terms of the instrument creating a power of
35 appointment manifest a contrary intent, the power is nongeneral if:

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

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

5 NEW SECTION. **Sec. 3205.** RULES OF CLASSIFICATION. (1) In this
6 section, "adverse party" means a person with a substantial beneficial
7 interest in property which would be affected adversely by a
8 powerholder's exercise or nonexercise of a power of appointment in
9 favor of the powerholder, the powerholder's estate, a creditor of the
10 powerholder, or a creditor of the powerholder's estate.

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

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

16 NEW SECTION. **Sec. 3206.** POWER TO REVOKE OR AMEND. A donor may
17 revoke or amend a power of appointment only to the extent that:

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

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

22 **ARTICLE 3**

23 **EXERCISE OF POWER OF APPOINTMENT**

24 NEW SECTION. **Sec. 3301.** REQUISITES FOR EXERCISE OF POWER OF
25 APPOINTMENT. A power of appointment is exercised only:

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

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

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

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

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

34 NEW SECTION. **Sec. 3302.** INTENT TO EXERCISE—DETERMINING INTENT
35 FROM RESIDUARY CLAUSE. (1) In this section:

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

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

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

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

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

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

14 (d) The powerholder did not release the power.

15 NEW SECTION. **Sec. 3303.** INTENT TO EXERCISE—AFTER-ACQUIRED
16 POWER. Unless the terms of the instrument exercising a power of
17 appointment manifest a contrary intent:

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

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

24 NEW SECTION. **Sec. 3304.** SUBSTANTIAL COMPLIANCE WITH DONOR-
25 IMPOSED FORMAL REQUIREMENT. A powerholder's substantial compliance
26 with a formal requirement of appointment imposed by the donor,
27 including a requirement that the instrument exercising the power of
28 appointment make reference or specific reference to the power, is
29 sufficient if:

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

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

35 NEW SECTION. **Sec. 3305.** PERMISSIBLE APPOINTMENT. (1) A
36 powerholder of a general power of appointment that permits
37 appointment to the powerholder or the powerholder's estate may make

1 any appointment, including an appointment in trust or creating a new
2 power of appointment, that the powerholder could make in disposing of
3 the powerholder's own property.

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

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

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

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

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

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

20 NEW SECTION. **Sec. 3306.** APPOINTMENT TO DECEASED APPOINTEE OR
21 PERMISSIBLE APPOINTEE'S DESCENDANT. (1) Subject to RCW 11.12.110 and
22 11.12.120, an appointment to a deceased appointee is ineffective.

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

29 NEW SECTION. **Sec. 3307.** IMPERMISSIBLE APPOINTMENT. (1) Except
30 as otherwise provided in section 3306 of this act, an exercise of a
31 power of appointment in favor of an impermissible appointee is
32 ineffective.

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

36 NEW SECTION. **Sec. 3308.** SELECTIVE ALLOCATION DOCTRINE. If a
37 powerholder exercises a power of appointment in a disposition that

1 also disposes of property the powerholder owns, the owned property
2 and the appointive property must be allocated in the permissible
3 manner that best carries out the powerholder's intent.

4 NEW SECTION. **Sec. 3309.** CAPTURE DOCTRINE—DISPOSITION OF
5 INEFFECTIVELY APPOINTED PROPERTY UNDER GENERAL POWER. To the extent a
6 powerholder of a general power of appointment, other than a power to
7 withdraw property from, revoke, or amend a trust, makes an
8 ineffective appointment:

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

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

13 (a) Passes to:

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

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

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

22 NEW SECTION. **Sec. 3310.** DISPOSITION OF UNAPPOINTED PROPERTY
23 UNDER RELEASED OR UNEXERCISED GENERAL POWER. To the extent a
24 powerholder releases or fails to exercise a general power of
25 appointment other than a power to withdraw property from, revoke, or
26 amend a trust:

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

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

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

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

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

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

5 NEW SECTION. **Sec. 3311.** DISPOSITION OF UNAPPOINTED PROPERTY
6 UNDER RELEASED OR UNEXERCISED NONGENERAL POWER. To the extent a
7 powerholder releases, ineffectively exercises, or fails to exercise a
8 nongeneral power of appointment:

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

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

13 (a) Passes to the permissible appointees if:

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

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

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

20 NEW SECTION. **Sec. 3312.** DISPOSITION OF UNAPPOINTED PROPERTY IF
21 PARTIAL APPOINTMENT TO TAKER IN DEFAULT. Unless the terms of the
22 instrument creating or exercising a power of appointment manifest a
23 contrary intent, if the powerholder makes a valid partial appointment
24 to a taker in default of appointment, the taker in default of
25 appointment may share fully in unappointed property.

26 NEW SECTION. **Sec. 3313.** APPOINTMENT TO TAKER IN DEFAULT. If a
27 powerholder makes an appointment to a taker in default of appointment
28 and the appointee would have taken the property in the same manner
29 and with the same conditions under a gift-in-default clause had the
30 property not been appointed, the power of appointment is deemed not
31 to have been exercised and the appointee takes under the clause.

32 NEW SECTION. **Sec. 3314.** POWERHOLDER'S AUTHORITY TO REVOKE OR
33 AMEND EXERCISE. A powerholder may revoke or amend an exercise of a
34 power of appointment only to the extent that:

35 (1) The powerholder reserves a power of revocation or amendment
36 in the instrument exercising the power of appointment and, if the

1 power is nongeneral, the terms of the instrument creating the power
2 of appointment do not prohibit the reservation; or

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

5 NEW SECTION. **Sec. 3315.** NOTICE OF EXERCISE OF TESTAMENTARY
6 POWER. Unless the person holding property subject to a testamentary
7 power of appointment has within six months after the holder's death
8 received written notice that the powerholder's last will has been
9 admitted to probate or an adjudication of testacy has been entered
10 with respect to the powerholder's last will in some jurisdiction, the
11 person may, until the time the notice is received, transfer the
12 property subject to appointment on the basis that the power has not
13 been effectively exercised.

14 **ARTICLE 4**

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

16 NEW SECTION. **Sec. 3401.** DISCLAIMER. As provided by chapter
17 11.86 RCW:

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

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

23 NEW SECTION. **Sec. 3402.** AUTHORITY TO RELEASE. A powerholder may
24 release a power of appointment, in whole or in part, except to the
25 extent the terms of the instrument creating the power prevent the
26 release.

27 NEW SECTION. **Sec. 3403.** METHOD OF RELEASE. A powerholder of a
28 releasable power of appointment may release the power in whole or in
29 part:

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

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

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

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

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

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

20 NEW SECTION. **Sec. 3502.** CREDITOR CLAIM—GENERAL POWER NOT
21 CREATED BY POWERHOLDER. (1) Except as otherwise provided in
22 subsection (2) of this section, appointive property subject to a
23 general power of appointment created by a person other than the
24 powerholder is subject to a claim of a creditor of:

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

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

30 (2) Subject to section 3504(3) of this act, a power of
31 appointment created by a person other than the powerholder which is
32 subject to an ascertainable standard relating to an individual's
33 health, education, support, or maintenance within the meaning of 26
34 U.S.C. Sec. 2041(b)(1)(A) or 26 U.S.C. Sec. 2514(c)(1), on the
35 effective date of this section, is treated for purposes of sections
36 3501 through 3504 of this act as a nongeneral power.

37 NEW SECTION. **Sec. 3503.** POWER TO WITHDRAW. (1) For purposes of
38 sections 3501 through 3504 of this act, and except as otherwise

1 provided in subsection (2) of this section, a power to withdraw
2 property from a trust is treated, during the time the power may be
3 exercised, as a presently exercisable general power of appointment to
4 the extent of the property subject to the power to withdraw.

5 (2) On the lapse, release, or waiver of a power to withdraw
6 property from a trust, the power is treated as a presently
7 exercisable general power of appointment only to the extent the value
8 of the property affected by the lapse, release, or waiver exceeds the
9 greater of the amount specified in 26 U.S.C. Sec. 2041(b)(2) and 26
10 U.S.C. Sec. 2514(e) or the amount specified in 26 U.S.C. Sec.
11 2503(b), on the effective date of this section.

12 NEW SECTION. **Sec. 3504.** CREDITOR CLAIM—NONGENERAL POWER. (1)
13 Except as otherwise provided in subsections (2) and (3) of this
14 section, appointive property subject to a nongeneral power of
15 appointment is exempt from a claim of a creditor of the powerholder
16 or the powerholder's estate.

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

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

26 **ARTICLE 6**

27 **MISCELLANEOUS PROVISIONS**

28 NEW SECTION. **Sec. 3601.** UNIFORMITY OF APPLICATION AND
29 CONSTRUCTION. In applying and construing this uniform act,
30 consideration must be given to the need to promote uniformity of the
31 law with respect to its subject matter among states that enact it.

32 NEW SECTION. **Sec. 3602.** RELATION TO ELECTRONIC SIGNATURES IN
33 GLOBAL AND NATIONAL COMMERCE ACT. This chapter modifies, limits, or
34 supersedes the electronic signatures in global and national commerce
35 act, 15 U.S.C. Sec. 7001 et seq., but does not modify, limit, or
36 supersede section 101(c) of that act, 15 U.S.C. Sec. 7001(c), or

1 authorize electronic delivery of any of the notices described in
2 section 103(b) of that act, 15 U.S.C. Sec. 7003(b).

3 NEW SECTION. **Sec. 3603.** APPLICATION TO EXISTING RELATIONSHIPS.

4 (1) Except as otherwise provided in this chapter, on and after the
5 effective date of this section:

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

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

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

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

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

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

29 **Sec. 3604.** RCW 11.12.110 and 2005 c 97 s 2 are each amended to
30 read as follows:

31 Unless otherwise provided, when any property shall be given or
32 any appointee appointed under a will, or under a trust of which the
33 decedent is a grantor and which by its terms becomes irrevocable upon
34 or before the grantor's death, to any issue of a grandparent of the
35 decedent and that issue dies before the decedent, or dies before that
36 issue's interest is no longer subject to a contingency, leaving
37 descendants who survive the decedent, those descendants shall take
38 that property or appointment as the predeceased issue would have done

1 if the predeceased issue had survived the decedent. If those
2 descendants are all in the same degree of kinship to the predeceased
3 issue they shall take equally or, if of unequal degree, then those of
4 more remote degree shall take by representation with respect to the
5 predeceased issue.

6 **Sec. 3605.** RCW 11.12.120 and 1999 c 42 s 604 are each amended to
7 read as follows:

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

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

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

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

27 **Sec. 3606.** RCW 11.95.110 and 1993 c 339 s 8 are each amended to
28 read as follows:

29 If the holder of a lifetime or testamentary power of appointment
30 may exercise the power in his or her own favor only for his or her
31 health, education, support, or maintenance as described in section
32 2041 or 2514 of the Internal Revenue Code and the applicable
33 regulations adopted under that section, then a provision of the
34 instrument creating the power of appointment that purports to confer
35 "absolute," "sole," "complete," "conclusive," or a similar discretion
36 shall be disregarded in the exercise of that power in favor of the
37 holder, and that power may then only be exercised reasonably and in
38 accordance with the ascertainable standards set forth in RCW

1 11.95.100 (as recodified by this act) and this section. A person who
2 has the right to remove or replace a trustee does not possess nor may
3 the person be deemed to possess, by virtue of having that right, the
4 power of the trustee who is subject to removal or to replacement.

5 **Sec. 3607.** RCW 11.95.120 and 1993 c 339 s 9 are each amended to
6 read as follows:

7 Notwithstanding any provision of RCW 11.95.100 through 11.95.150
8 (as recodified by this act) seemingly to the contrary, RCW 11.95.100
9 through 11.95.150 (as recodified by this act) do not limit or
10 restrict the distribution of income of a trust that qualifies or that
11 otherwise could have qualified for the marital deduction under
12 section 2056 or 2523 of the Internal Revenue Code, those Internal
13 Revenue Code sections requiring that all income be distributed to the
14 spouse of the decedent or of the trustor at least annually, whether
15 or not an election was in fact made under section 2056(b)(7) or
16 2523(f) of the Internal Revenue Code. Further, RCW 11.95.100 through
17 11.95.150 (as recodified by this act) do not limit or restrict the
18 power of a spouse of the trustor or the spouse of the decedent to
19 exercise a power of appointment described in section 2056(b)(5) or
20 2523(e) of the Internal Revenue Code with respect to that portion of
21 the trust that could otherwise qualify for the marital deduction
22 under either of those Internal Revenue Code sections.

23 **Sec. 3608.** RCW 11.95.130 and 1993 c 339 s 10 are each amended to
24 read as follows:

25 RCW 11.95.100 through 11.95.150 (as recodified by this act) do
26 not raise an inference that the law of this state prior to July 25,
27 1993, was different than contained in RCW 11.95.100 through 11.95.150
28 (as recodified by this act).

29 **Sec. 3609.** RCW 11.95.140 and 1999 c 42 s 617 are each amended to
30 read as follows:

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

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

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

3 (A) The trust is revoked, or amended to provide otherwise, and
4 the terms of any amendment specifically refer to RCW 11.95.100 or
5 11.95.110 (as recodified by this act), respectively, and provide
6 expressly to the contrary;

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

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

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

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

31 (a) The terms of the instrument specifically refer to RCW
32 11.95.100 or 11.95.110 (as recodified by this act) respectively and
33 provide expressly to the contrary; or

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

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

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

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

7 **Sec. 3610.** RCW 11.95.150 and 1993 c 339 s 12 are each amended to
8 read as follows:

9 RCW 11.95.100 through 11.95.140 (as recodified by this act)
10 neither create a new cause of action nor impair an existing cause of
11 action that, in either case, relates to a power that was exercised
12 before July 25, 1993. RCW 11.95.100 through 11.95.140 (as recodified
13 by this act) neither create a new cause of action nor impair an
14 existing cause of action that in either case relates to a power
15 proscribed, limited, or qualified under RCW 11.95.100 through
16 11.95.140 (as recodified by this act).

17 **Sec. 3611.** RCW 11.97.010 and 2013 c 272 s 7 are each amended to
18 read as follows:

19 The trustor of a trust may by the provisions of the trust relieve
20 the trustee from any or all of the duties, restrictions, and
21 liabilities which would otherwise be imposed by chapters ~~((11.95))~~
22 11.--- (the new chapter created in section 3615 of this act), 11.98,
23 11.100, and ~~((11.104A))~~ 11.--- (the new chapter created in section
24 2808 of this act) RCW and RCW 11.106.020, or may alter or deny any or
25 all of the privileges and powers conferred by those provisions; or
26 may add duties, restrictions, liabilities, privileges, or powers to
27 those imposed or granted by those provisions. If any specific
28 provision of those chapters is in conflict with the provisions of a
29 trust, the provisions of the trust control whether or not specific
30 reference is made in the trust to any of those chapters, except as
31 provided in RCW 6.32.250, 11.96A.190, 19.36.020, 11.98.002, 11.98.200
32 through 11.98.240, 11.98.072(1), 11.95.100 (as recodified by this
33 act) through 11.95.150 (as recodified by this act), and chapter
34 11.103 RCW. In no event may a trustee be relieved of the duty to act
35 in good faith and with honest judgment. Notwithstanding the breadth
36 of discretion granted to a trustee in the terms of the trust,
37 including the use of such terms as "absolute," "sole," or
38 "uncontrolled," the trustee must exercise a discretionary power in

1 good faith and in accordance with the terms and purposes of the trust
2 and the interests of the beneficiaries.

3 **Sec. 3612.** RCW 11.97.900 and 2003 c 254 s 5 are each amended to
4 read as follows:

5 This chapter applies to the provisions of chapters (~~11.95~~)
6 11.--- (the new chapter created in section 3615 of this act), 11.98,
7 11.100, and (~~11.104A~~) 11.--- (the new chapter created in section
8 2808 of this act) RCW and to RCW 11.106.020.

9 NEW SECTION. **Sec. 3613.** RCW 11.95.100, 11.95.110, 11.95.120,
10 11.95.130, 11.95.140, and 11.95.150 are each recodified as sections
11 in chapter 11.--- RCW (the new chapter created in section 3614 of
12 this act).

13 NEW SECTION. **Sec. 3614.** The following acts or parts of acts are
14 each repealed:

- 15 (1) RCW 11.95.010 (Releases) and 1985 c 30 s 31;
- 16 (2) RCW 11.95.020 (Releases—Partial releases) and 1985 c 30 s 32;
- 17 (3) RCW 11.95.030 (Releases—Delivery) and 1995 c 91 s 1 & 1985 c
18 30 s 33;
- 19 (4) RCW 11.95.040 (Releases—Effect of RCW 11.95.010 through
20 11.95.050 on prior releases) and 1985 c 30 s 34;
- 21 (5) RCW 11.95.060 (Exercise of powers of appointment) and 1989 c
22 33 s 1 & 1985 c 30 s 36;
- 23 (6) RCW 11.95.070 (Application of chapter—Application of 1984 c
24 149) and 2006 c 360 s 8 & 1985 c 30 s 37;
- 25 (7) RCW 11.95.160 (Lapse of a power—Intent not to exercise a
26 power—Treatment) and 2006 c 360 s 12; and
- 27 (8) RCW 11.95.900 (Construction—Chapter applicable to state
28 registered domestic partnerships—2009 c 521) and 2009 c 521 s 38.

29 NEW SECTION. **Sec. 3615.** CODIFICATION. Sections 3101 through
30 3603 and 3616 of this act constitute a new chapter in Title 11 RCW.

31 NEW SECTION. **Sec. 3616.** EFFECTIVE DATE. Sections 3101 through
32 3614 of this act take effect January 1, 2022.

MISCELLANEOUS PROVISIONS

Sec. 4001. 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. 4002. 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. 4003. 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. 4004. 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

1 nonintervention powers to all heirs, all beneficiaries of a gift
2 under the decedent's will, and all persons who have requested, and
3 who are entitled to, notice under RCW 11.28.240, except that:

4 (a) A person is not entitled to notice if the person has, in
5 writing, either waived notice of the hearing or consented to the
6 grant of nonintervention powers; and

7 (b) An heir who is not also a beneficiary of a gift under a will
8 is not entitled to notice if the will has been probated and the time
9 for contesting the validity of the will has expired.

10 (3) The notice required by this section must be either personally
11 served or sent by regular mail at least ten days before the date of
12 the hearing, and proof of mailing of the notice must be by affidavit
13 filed in the cause. The notice must contain the decedent's name, the
14 probate cause number, and the name and address of the personal
15 representative, and must state in substance as follows:

16 (a) The personal representative has petitioned the superior court
17 of the state of Washington for county, for the entry of an
18 order granting nonintervention powers and a hearing on that petition
19 will be held on, the day of,,
20 at o'clock, . . M.;

21 (b) The petition for an order granting nonintervention powers has
22 been filed with the court;

23 (c) Following the entry by the court of an order granting
24 nonintervention powers, the personal representative is entitled to
25 administer and close the decedent's estate without further court
26 intervention or supervision; and

27 (d) A person entitled to notice has the right to appear at the
28 time of the hearing on the petition for an order granting
29 nonintervention powers and to object to the granting of
30 nonintervention powers to the personal representative.

31 (4) If notice is not required, or all persons entitled to notice
32 have either waived notice of the hearing or consented to the entry of
33 an order granting nonintervention powers as provided in this section,
34 the court may hear the petition for an order granting nonintervention
35 powers at any time.

36 **Sec. 4005.** RCW 11.68.050 and 1997 c 252 s 62 are each amended to
37 read as follows:

38 (1) If at the time set for the hearing upon a petition for
39 nonintervention powers, any person entitled to notice of the hearing

1 on the petition under RCW 11.68.041 shall appear and object to the
2 granting of nonintervention powers to the personal representative of
3 the estate, the court shall consider the objections, if any, in
4 connection with its determination under RCW 11.68.011(2)(c) of
5 whether a grant of nonintervention powers would be in the best
6 interests of the decedent's beneficiaries.

7 (2) The nonintervention powers of a personal representative may
8 not be restricted at a hearing on a petition for nonintervention
9 powers in which the court is required to grant nonintervention powers
10 under RCW 11.68.011(2) (a) and (b), unless a will specifies that the
11 nonintervention powers of a personal representative may be restricted
12 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.~~)

18 NEW SECTION. Sec. 4006. A new section is added to chapter 11.68
19 RCW to read as follows:

20 A personal representative with nonintervention powers may
21 administer and settle the estate without supervision or intervention
22 by the court except as otherwise provided in this chapter.

23 NEW SECTION. Sec. 4007. A new section is added to chapter 11.68
24 RCW to read as follows:

25 (1) A personal representative with nonintervention powers has the
26 power to construe and interpret the terms of a probated will, except
27 as the probated will or an order of the court may otherwise direct.

28 (2) Unless otherwise provided in the probated will:

29 (a) A party, as defined in RCW 11.96A.030, may either petition
30 the court under chapter 11.96A RCW to have an ambiguous provision of
31 a probated will construed by the court or may otherwise address,
32 resolve, and settle the matter under the procedures provided under
33 chapter 11.96A RCW; and

34 (b) There is a rebuttable presumption that the construction of an
35 ambiguous provision that is made by a personal representative with
36 nonintervention powers is consistent with the intent of the testator.

37 (3) A party, as defined in RCW 11.96A.030, may commence an action
38 to reform the terms of a will as provided in RCW 11.96A.125.

1 **Sec. 4008.** RCW 11.68.065 and 1999 c 42 s 614 are each amended to
2 read as follows:

3 A beneficiary (~~whose~~) who has not acknowledged in writing that
4 his, her, or its interest in an estate has (~~not~~) been fully paid or
5 distributed may petition the court for an order directing the
6 personal representative to deliver a report of the affairs of the
7 estate signed and verified by the personal representative. The
8 petition may be filed at any time after one year from the day on
9 which the report was last delivered, or, if none, then one year after
10 the order appointing the personal representative. Upon hearing of the
11 petition after due notice as required in RCW 11.96A.110, the court
12 may, for good cause shown, order the personal representative to
13 deliver to the petitioner the report for any period not covered by a
14 previous report. The report for the period shall include such of the
15 following as the court may order: A description of the amount and
16 nature of all property, real and personal, that has come into the
17 hands of the personal representative; a statement of all property
18 collected and paid out or distributed by the personal representative;
19 a statement of claims filed and allowed against the estate and those
20 rejected; any estate, inheritance, or fiduciary income tax returns
21 filed by the personal representative; and such other information as
22 the order may require. This subsection does not limit any power the
23 court might otherwise have at any time during the administration of
24 the estate to require the personal representative to account or
25 furnish other information to any person interested in the estate.

26 **Sec. 4009.** RCW 11.68.070 and 2010 c 8 s 2057 are each amended to
27 read as follows:

28 (~~If any personal representative who has been granted~~
29 ~~nonintervention powers fails to execute his or her trust faithfully~~
30 ~~or is subject to removal for any reason specified in RCW 11.28.250 as~~
31 ~~now or hereafter amended, upon petition of any unpaid creditor of the~~
32 ~~estate who has filed a claim or any heir, devisee, legatee, or of any~~
33 ~~person on behalf of any incompetent heir, devisee, or legatee, such~~
34 ~~petition being supported by affidavit which makes a prima facie~~
35 ~~showing of cause for removal or restriction of powers, the court~~
36 ~~shall cite such personal representative to appear before it, and if,~~
37 ~~upon hearing of the petition it appears that said personal~~
38 ~~representative has not faithfully discharged said trust or is subject~~
39 ~~to removal for any reason specified in RCW 11.28.250 as now or~~

1 hereafter amended, then, in the discretion of the court the powers of
2 the personal representative may be restricted or the personal
3 representative may be removed and a successor appointed. In the event
4 the court shall restrict the powers of the personal representative in
5 any manner, it shall endorse the words "Powers restricted" upon the
6 original order of solvency together with the date of said
7 endorsement, and in all such cases the cost of the citation, hearing,
8 and reasonable attorney's fees may be awarded as the court
9 determines.) (1)(a) A party, as defined in RCW 11.96A.030, may
10 petition the court under chapter 11.96A RCW for a determination that
11 a personal representative:

12 (i) Has breached a fiduciary duty;

13 (ii) Has exceeded the personal representative's authority;

14 (iii) Has abused the personal representative's discretion in
15 exercising a power;

16 (iv) Has otherwise failed to execute the trust faithfully;

17 (v) Has violated a statute or common law affecting the estate; or

18 (vi) Is subject to removal for a reason specified in RCW
19 11.28.250.

20 (b) The petition submitted under (a) of this subsection must
21 allege facts in support of the claim and must be verified or be
22 supported by an affidavit showing facts in support of the claim.

23 (2) If the court finds that the personal representative has
24 committed one or more of the acts listed in subsection (1)(a) of this
25 section, the court may order such remedy in law or in equity as it
26 deems appropriate. The remedy may include, but not be limited to,
27 awarding money damages, surcharging the personal representative,
28 directing the personal representative to take a specific action,
29 restricting the powers of the personal representative, removing the
30 personal representative and appointing a successor, and awarding fees
31 and costs under RCW 11.96A.150. If the court restricts the powers of
32 the personal representative, it shall endorse the words "powers
33 restricted" upon the original order granting the personal
34 representative nonintervention powers and upon the letters
35 testamentary or of administration together with the date of the
36 endorsement.

37 **Sec. 4010.** RCW 11.68.090 and 2011 c 327 s 3 are each amended to
38 read as follows:

1 (1) ~~((Any personal representative acting under nonintervention~~
2 ~~powers may borrow money on the general credit of the estate and may~~
3 ~~mortgage, encumber, lease, sell, exchange, convey, and otherwise have~~
4 ~~the same powers, and be subject to the same limitations of liability,~~
5 ~~that a trustee has under chapters 11.98, 11.100, and 11.102 RCW with~~
6 ~~regard to the assets of the estate, both real and personal, all~~
7 ~~without an order of court and without notice, approval, or~~
8 ~~confirmation, and in all other respects administer and settle the~~
9 ~~estate of the decedent without intervention of court. Except as~~
10 ~~otherwise specifically provided in this title or by order of court, a~~
11 ~~personal representative acting under nonintervention powers may~~
12 ~~exercise the powers granted to a personal representative under~~
13 ~~chapter 11.76 RCW but is not obligated to comply with the duties~~
14 ~~imposed on personal representatives by that chapter. A party to such~~
15 ~~a transaction and the party's successors in interest are entitled to~~
16 ~~have it conclusively presumed that the transaction is necessary for~~
17 ~~the administration of the decedent's estate.~~

18 ~~(2) Except as otherwise provided in chapter 11.108 RCW or~~
19 ~~elsewhere in order to preserve a marital deduction from estate taxes,~~
20 ~~a testator may by a will relieve the personal representative from any~~
21 ~~or all of the duties, restrictions, and liabilities imposed: Under~~
22 ~~common law; by chapters 11.54, 11.56, 11.100, 11.102, and 11.104A~~
23 ~~RCW; or by RCW 11.28.270 and 11.28.280, 11.68.095, and 11.98.070. In~~
24 ~~addition, a testator may likewise alter or deny any or all of the~~
25 ~~privileges and powers conferred by this title, and may add duties,~~
26 ~~restrictions, liabilities, privileges, or powers to those imposed or~~
27 ~~granted by this title. If any common law or any statute referenced~~
28 ~~earlier in this subsection is in conflict with a will, the will~~
29 ~~controls whether or not specific reference is made in the will to~~
30 ~~this section. However, notwithstanding the rest of this subsection, a~~
31 ~~personal representative may not be relieved of the duty to act in~~
32 ~~good faith and with honest judgment.)) Except as otherwise provided~~
33 ~~in this chapter, a personal representative with nonintervention~~
34 ~~powers has:~~

35 (a) All powers that are granted by common law or statute to a
36 personal representative without nonintervention powers or that a
37 court supervising the settlement and administration of a decedent's
38 estate may grant to a personal representative without nonintervention
39 powers;

1 (b) The power to borrow money on the general credit of the
2 estate;

3 (c) The power to mortgage, encumber, lease, sell, exchange,
4 convey, assign, and otherwise transfer the decedent's real and
5 personal property;

6 (d) The power to perform the decedent's contracts;

7 (e) The power to determine the persons entitled to the estate; to
8 partition property, sell property, and/or distribute property pro
9 rata or nonpro rata, and otherwise to administer and settle the
10 decedent's estate;

11 (f) The powers, privileges, and limitations of liability of a
12 trustee under chapters 11.98, 11.100, and 11.102 RCW and under the
13 principles of equity with regard to the assets of the estate, both
14 real and personal;

15 (g) Any further power appropriate to the exercise or nonexercise
16 of a power granted under this subsection (1); and

17 (h) The right and authority to exercise the powers under this
18 subsection (1) without an order of the court and without notice to,
19 direction from, approval by, confirmation by, or intervention of any
20 court.

21 (2) Except as otherwise provided in this chapter, a personal
22 representative with nonintervention powers has the same duties,
23 restrictions, and liabilities as a personal representative without
24 nonintervention powers and shall act for the benefit of all persons
25 interested in the estate, as defined in RCW 11.96A.030(6) relative to
26 a decedent's estate, except that:

27 (a) A personal representative with nonintervention powers may act
28 without an order of the court and without notice to, direction from,
29 approval by, confirmation by, or intervention of any court;

30 (b) A personal representative with nonintervention powers has no
31 duty to follow the procedures of RCW 11.76.010 through 11.76.080 or
32 chapter 11.56 RCW; and

33 (c) A personal representative with nonintervention powers must
34 exercise a discretionary power in good faith, with honest judgment,
35 and in accordance with the terms and purposes of the probated will
36 and the interests of the beneficiaries.

37 (3) Except as provided in subsection (4) of this section, a
38 testator may by will:

39 (a) Add to, alter, or deny any or all of the powers and
40 privileges conferred upon the personal representative with

1 nonintervention powers to administer and settle the testator's estate
2 by common law, statute, or the principles of equity; and

3 (b) Add to, alter, or remove any or all of the duties,
4 restrictions, or liabilities imposed on a personal representative
5 with nonintervention powers relative to the administration and
6 settlement of the testator's estate by common law, statute, or the
7 principles of equity.

8 (4) No testamentary provisions may limit the effect of RCW
9 6.32.250, 11.20.080, 11.48.010, 11.48.020 (although without the
10 necessity of any order of a court), 11.48.030, 11.48.140, 11.68.065,
11 11.68.070, 11.68.080, 11.68.090, 11.76.110, 11.76.150, 11.76.160,
12 11.76.170, or 11.96A.190, or of chapters 11.36, 11.44, 11.54, and
13 11.108 RCW or any other laws that preserve a marital deduction from
14 estate taxes; and in no event may a personal representative with
15 nonintervention powers be relieved of the duty to act in good faith,
16 with honest judgment, and in accordance with the terms and purposes
17 of the probated will and the interests of the beneficiaries.

18 (5) The common law and the principles of equity supplement this
19 chapter.

20 **Sec. 4011.** RCW 11.68.095 and 1997 c 252 s 67 are each amended to
21 read as follows:

22 ((All)) Except as otherwise provided by the probated will or by
23 order of a court, all of the provisions of RCW 11.98.016 regarding
24 the exercise of powers by co-trustees of a trust shall apply to the
25 co-personal representatives of an estate in which the co-personal
26 representatives have been granted nonintervention powers, as if, for
27 purposes of the interpretation of that law, co-personal
28 representatives were co-trustees and an estate were a trust.

29 NEW SECTION. Sec. 4012. A new section is added to chapter 11.68
30 RCW to read as follows:

31 A party to a transaction with a personal representative with
32 nonintervention powers and the party's successors in interest are
33 entitled to have it conclusively presumed that the transaction is
34 necessary for the administration of the decedent's estate.

35 **Sec. 4013.** RCW 11.68.100 and 2010 c 8 s 2058 are each amended to
36 read as follows:

1 (1) When the estate is ready to be closed, the court, upon
2 application by the personal representative who has nonintervention
3 powers, shall ~~((have the authority and it shall be its duty, to))~~
4 make and cause to be entered a decree ~~((which))~~ that either:

5 (a) Finds and adjudges that all approved claims ~~((of))~~ against
6 the decedent have been paid, finds and adjudges the heirs of the
7 decedent or those persons entitled to take under ~~((his or her))~~ the
8 decedent's will, and distributes the decedent's property ~~((of the~~
9 ~~decedent))~~ to the persons entitled ~~((thereto))~~ to it; or

10 (b) Approves the accounting of the personal representative and
11 settles the estate of the decedent in the manner provided for in the
12 administration of those estates in which the personal representative
13 has not acquired nonintervention powers.

14 (2) Either decree provided for in this section shall be made
15 after notice given as provided for in the settlement of estates by a
16 personal representative who has not acquired nonintervention powers.
17 The petition for either decree provided for in this section shall
18 state the fees paid or proposed to be paid to the personal
19 representative, ~~((his or her))~~ the personal representative's
20 attorneys, accountants, and appraisers, and any heir, devisee, or
21 legatee whose interest in the assets of a decedent's estate would be
22 reduced by the payment of said fees shall receive a copy of said
23 petition with the notice of hearing thereon; at the request of the
24 personal representative or any said heir, devisee, or legatee, the
25 court shall, at the time of the hearing on either petition, determine
26 the reasonableness of said fees. The court shall take into
27 consideration all criteria forming the basis for the determination of
28 the amount of such fees as contained in the code of professional
29 responsibility; in determining the reasonableness of the fees charged
30 by any personal representative, accountants, and appraisers the court
31 shall take into consideration the criteria forming the basis for the
32 determination of attorney's fees, to the extent applicable, and any
33 other factors which the court determines to be relevant in the
34 determination of the amount of fees to be paid to such personal
35 representative.

36 **Sec. 4014.** RCW 11.68.110 and 2016 c 202 s 8 are each amended to
37 read as follows:

38 (1) If a personal representative who has acquired nonintervention
39 powers does not apply to the court for either of the final decrees

1 provided for in RCW 11.68.100 as now or hereafter amended, the
2 personal representative shall, when the administration of the estate
3 has been completed, file a declaration that must state as follows:

4 (a) The date of the decedent's death and the decedent's residence
5 at the time of death;

6 (b) Whether or not the decedent died testate or intestate;

7 (c) If the decedent died testate, the date of the decedent's last
8 will and testament and the date of the order probating the will;

9 (d) That each creditor's claim which was justly due and properly
10 presented as required by law has been paid or otherwise disposed of
11 by agreement with the creditor, and that the amount of ((estate))
12 taxes ((due as the result of the decedent's death)) assessable
13 against the estate has been determined, settled, and paid or
14 otherwise provided for;

15 (e) That the personal representative has completed the
16 administration of the decedent's estate without court intervention,
17 and the estate is ready to be ((closed)) settled and distributed;

18 (f) If the decedent died intestate, the names, addresses (if
19 known), and relationship of each heir of the decedent, together with
20 the distributive share of each heir; and

21 (g) The amount of fees paid or to be paid to each of the
22 following: (i) Personal representative or representatives; (ii)
23 lawyer or lawyers; (iii) appraiser or appraisers; and (iv) accountant
24 or accountants; and that the personal representative believes the
25 fees to be reasonable and does not intend to obtain court approval of
26 the amount of the fees or to submit an estate accounting to the court
27 for approval.

28 ~~(2) ((Subject to the requirement of notice as provided in this~~
29 ~~section, unless an heir, devisee, or legatee of a decedent petitions~~
30 ~~the court either for an order requiring the personal representative~~
31 ~~to obtain court approval of the amount of fees paid or to be paid to~~
32 ~~the personal representative, lawyers, appraisers, or accountants, or~~
33 ~~for an order requiring an accounting, or both, within thirty days~~
34 ~~from the date of filing a declaration of completion of probate, the~~
35 ~~personal representative will be automatically discharged without~~
36 ~~further order of the court and the representative's powers will cease~~
37 ~~thirty days after the filing of the declaration of completion of~~
38 ~~probate, and the declaration of completion of probate shall, at that~~
39 ~~time, be the equivalent of the entry of a decree of distribution in~~
40 ~~accordance with chapter 11.76 RCW for all legal intents and purposes.~~

1 ~~(3)~~) If:

2 (a) (i) The personal representative with nonintervention powers
3 files a declaration as specified in subsection (1) of this section;

4 (ii) The personal representative provides the notice as required
5 by subsection (4) of this section; and

6 (iii) No party, as defined in RCW 11.96A.030, petitions the court
7 under subsection (3) of this section; then:

8 (b) (i) The filing of the declaration will be the legal equivalent
9 of the entry of a decree of distribution under chapter 11.76 RCW;

10 (ii) The amount of fees paid or to be paid will be deemed
11 reasonable and will be approved;

12 (iii) The acts of the personal representative will be approved;

13 (iv) The personal representative, and any bond ensuring the
14 proper actions of the personal representative, will be discharged;
15 and

16 (v) The estate will be determined to have been properly and fully
17 distributed and settled.

18 (3) If the personal representative provides the notice as
19 required by subsection (4) of this section, then, within 30 days
20 following the filing of a declaration of completion of probate under
21 this section, any party, as defined in RCW 11.96A.030, may petition
22 the court under chapter 11.96A RCW to enforce the party's rights, to
23 review the reasonableness of the fees, and/or to compel the personal
24 representative to close the estate under RCW 11.68.100.

25 (4) Within five days of the date of the filing of the declaration
26 of completion, the personal representative or the personal
27 representative's lawyer shall mail a copy of the declaration of
28 completion to each ((~~heir, legatee, or devisee of the decedent~~))
29 party as defined in RCW 11.96A.030, who: (a) Has not waived notice of
30 the filing, in writing, filed in the cause; and (b) either has not
31 received the full amount of the distribution to which the ((~~heir,~~
32 legatee, or devisee)) party is entitled or has a property right that
33 might be affected adversely by the discharge of the personal
34 representative under this section, together with a notice which shall
35 be substantially as follows:

36 CAPTION NOTICE OF FILING OF
37 OF DECLARATION OF COMPLETION
38 CASE OF PROBATE

1 NOTICE IS GIVEN that the attached Declaration of
2 Completion of Probate was filed by the undersigned in
3 the above-entitled court on the day of,
4 (year); unless you ~~((shall file a))~~ petition ~~((in))~~ the
5 above-entitled court ~~((requesting the court to approve))~~
6 under chapter 11.96A RCW to enforce your rights, to
7 review the reasonableness of the fees, ~~((or for an~~
8 ~~accounting, or both, and serve a copy thereof upon))~~
9 and/or to compel the personal representative ~~((or the~~
10 ~~personal representative's lawyer))~~ to close the estate
11 under RCW 11.68.100, within thirty days after the date
12 of the filing of the Declaration of Completion of Probate,
13 the ~~((amount))~~ schedule of fees ~~((paid or to be paid))~~ set
14 forth in the Declaration of Completion of Probate will be
15 deemed reasonable, the acts of the personal
16 representative will be deemed approved and the payment
17 of those fees will be approved, the personal
18 representative (and any bond ensuring the proper action
19 of the personal representative) will be automatically
20 discharged without further order of the court, the estate
21 will be deemed to have been properly and fully
22 distributed and settled, and the Declaration of
23 Completion of Probate will be final and deemed the
24 equivalent of a Decree of Distribution entered under
25 chapter 11.76 RCW.

26 ~~((If you file and serve a petition within the period~~
27 ~~specified, the undersigned will request the court to fix a~~
28 ~~time and place for the hearing of your petition, and you~~
29 ~~will be notified of the time and place thereof, by mail, or~~
30 ~~personal service, not less than ten days before the hearing~~
31 ~~on the petition.~~

32 Dated this day of, (year))

33

34 Personal ((Representative))
35 Representative's Name

36 ~~((4))~~ (5) If all ~~((heirs, devisees, and legatees))~~ parties as
37 defined in RCW 11.96A.030 of the decedent entitled to notice under
38 this section waive, in writing, the notice required by this section,

1 the personal representative will be automatically discharged without
2 further order of the court and the declaration of completion of
3 probate will become effective as a decree of distribution upon the
4 date of filing thereof. In those instances where the personal
5 representative has been required to furnish bond, and a declaration
6 of completion is filed pursuant to this section, any bond furnished
7 by the personal representative shall be automatically discharged upon
8 the discharge of the personal representative.

9 **Sec. 4015.** RCW 11.68.112 and 1997 c 252 s 69 are each amended to
10 read as follows:

11 If the declaration of completion of probate and the notice of
12 filing of declaration of completion of probate state that the
13 personal representative intends to make final distribution within
14 five business days after the final date on which a (~~beneficiary~~
15 ~~could petition for an order to approve fees or to require an~~
16 ~~accounting)) party as defined in RCW 11.96A.030 entitled to notice
17 under RCW 11.68.110 could file a petition under RCW 11.68.110(3),
18 which date is referred to in this section as the "effective date of
19 the declaration of completion," (~~and~~) if the notice of filing of
20 declaration of completion of probate sent to each (~~beneficiary who~~
21 ~~has not received everything to which that beneficiary is entitled~~
22 ~~from the decedent's estate)) party as defined in RCW 11.96A.030
23 entitled to notice under RCW 11.68.110 specifies the amount of the
24 minimum distribution to be made to that (~~beneficiary)) party, and if
25 no party as defined in RCW 11.96A.030 entitled to notice under RCW
26 11.68.110 petitions the court under RCW 11.68.110(3) within 30 days
27 from the date of filing a declaration of completion of probate, the
28 personal representative retains, for five business days following the
29 effective date of the declaration of completion, the power to make
30 the stated minimum distributions. In this case, the personal
31 representative is discharged from all (~~claims)) liability other than
32 (~~those)) any liability relating to the actual distribution of the
33 reserve, at the effective date of the declaration of completion. The
34 personal representative is only discharged from liability for the
35 distribution of the reserve when the whole reserve has been
36 distributed and each beneficiary has received at least the
37 distribution which that beneficiary's notice stated that the
38 beneficiary would receive.~~~~~~~~~~

1 **Sec. 4016.** RCW 11.68.114 and 1998 c 292 s 203 are each amended
2 to read as follows:

3 (1) The personal representative retains the powers to: Deal with
4 the taxing authority of any federal, state, or local government; hold
5 a reserve in an amount not to exceed three thousand dollars, for the
6 determination and payment of any additional taxes, interest, and
7 penalties, and of all reasonable expenses related directly or
8 indirectly to such determination or payment; pay from the reserve the
9 reasonable expenses, including compensation for services rendered or
10 goods provided by the personal representative or by the personal
11 representative's employees, independent contractors, and other
12 agents, in addition to any taxes, interest, or penalties assessed by
13 a taxing authority; receive and hold any credit, including interest,
14 from any taxing authority; and distribute the residue of the reserve
15 to the intended beneficiaries of the reserve; if:

16 (a) In lieu of the statement set forth in RCW 11.68.110(1)(e),
17 the declaration of completion of probate states that:

18 The personal representative has completed the
19 administration of the decedent's estate without court
20 intervention, and the estate is ready to be closed, except
21 for the determination of taxes and of interest and penalties
22 thereon as permitted under this section;

23 and

24 (b) The notice of the filing of declaration of completion of
25 probate must be in substantially the following form:

26 CAPTION NOTICE OF FILING OF
27 OF DECLARATION OF COMPLETION
28 CASE OF PROBATE

29 NOTICE IS GIVEN that the attached Declaration of
30 Completion of Probate was filed by the undersigned in the
31 above-entitled court on the . . . day of . . . , . . . ;
32 unless you (~~file a~~) petition (~~in~~) the above-entitled
33 court (~~requesting the court to approve~~) under chapter
34 11.96A RCW to enforce your rights, to review the
35 reasonableness of the fees, (~~or for an accounting, or both,~~
36 and serve a copy thereof upon) and/or to compel the personal
37 representative (~~or the personal representative's lawyer~~) to

1 close the estate under RCW 11.68.100, within thirty days
2 after the date of the filing of the Declaration of Completion
3 of Probate:

4 (i) The schedule of fees set forth in the Declaration of
5 Completion of Probate will be deemed reasonable and the
6 payment of those fees will be approved;

7 (ii) The Declaration of Completion of Probate will be
8 final and deemed the equivalent of a Decree of Distribution
9 entered under chapter 11.76 RCW;

10 (iii) The acts that the personal representative performed
11 before the Declaration of Completion of Probate was filed
12 will be deemed approved, and the personal representative will
13 be automatically discharged without further order of the
14 court with respect to all such acts; and

15 (iv) The personal representative will retain the power to
16 deal with the taxing authorities, together with \$. . . . for
17 the determination and payment of all remaining tax
18 obligations. Only that portion of the reserve that remains
19 after the settlement of any tax liability, and the payment of
20 any expenses associated with such settlement, will be
21 distributed to the persons legally entitled to the reserve.

22 ~~((2) If the requirements in subsection (1) of this section~~
23 ~~are met, the personal representative is discharged from all~~
24 ~~claims other than those relating to the settlement of any tax~~
25 ~~obligations and the actual distribution of the reserve, at~~
26 ~~the effective date of the declaration of completion.))~~

27 The personal representative ~~((is))~~ (and any bond ensuring the
28 proper action of the personal representative) will be
29 discharged from liability ~~((from))~~ for the settlement of any
30 tax obligations and the distribution of the reserve, and the
31 personal representative's powers will cease, thirty days
32 after the personal representative has mailed to those persons
33 who would have shared in the distribution of the reserve had
34 the reserve remained intact and has filed with the court
35 copies of checks or receipts showing how the reserve was in
36 fact distributed, unless a person with an interest in the
37 reserve petitions the court earlier within the thirty-day
38 period for an order requiring an accounting of the reserve or
39 an order determining the reasonableness, or lack of
40 reasonableness, of distributions made from the reserve.

1
2 Personal Representative's Name

3 (2) If the requirements in subsection (1) of this section are met
4 and if no party as defined in RCW 11.96A.030 entitled to notice under
5 RCW 11.68.110 petitions the court under chapter 11.96A RCW to enforce
6 the party's rights, to review the reasonableness of the fees, and/or
7 to compel the personal representative to close the estate under RCW
8 11.68.100, within 30 days from the date of filing a declaration of
9 completion of probate, the personal representative is discharged from
10 all liability other than liability relating to the settlement of any
11 tax obligations and the actual distribution of the reserve, at the
12 final date on which a beneficiary could petition the court under
13 subsection (1) of this section, which date is referred to in this
14 section as the "effective date of the declaration of completion." The
15 personal representative is discharged from liability for the
16 settlement of any tax obligations and the distribution of the
17 reserve, the personal representative's powers cease, and the
18 declaration of completion of probate will be final and deemed the
19 equivalent of a decree of distribution entered under chapter 11.76
20 RCW with respect to the distribution of the reserve, 30 days after
21 the personal representative has mailed to those persons who would
22 have shared in the distribution of the reserve had the reserve
23 remained intact and has filed with the court copies of checks or
24 receipts showing how the reserve was in fact distributed, unless a
25 person with an interest in the reserve petitions the court earlier
26 within the 30-day period for an order requiring an accounting of the
27 reserve or an order determining the reasonableness, or lack of
28 reasonableness, of distributions made from the reserve. If the
29 personal representative has been required to furnish a bond, any bond
30 furnished by the personal representative is automatically discharged
31 upon the final discharge of the personal representative.

32 **Sec. 4017.** RCW 11.68.120 and 2010 c 8 s 2059 are each amended to
33 read as follows:

34 A personal representative who has acquired nonintervention powers
35 in accordance with this chapter may present a matter, as defined in
36 RCW 11.96A.030, to the court for resolution or for instructions under
37 chapter 11.96A RCW at any time. A personal representative shall not
38 be deemed to have waived ((his or her)) the personal representative's

1 nonintervention powers by seeking or obtaining any order or decree
2 during the course of (~~his or her~~) the administration of the estate.

3 **Sec. 4018.** RCW 11.96A.030 and 2015 c 115 s 1 are each amended to
4 read as follows:

5 The definitions in this section apply throughout this chapter
6 unless the context clearly requires otherwise.

7 (1) "Citation" or "cite" and other similar terms, when required
8 of a person interested in the estate or trust or a party to a
9 petition, means to give notice as required under RCW 11.96A.100.
10 "Citation" or "cite" and other similar terms, when required of the
11 court, means to order, as authorized under RCW 11.96A.020 and
12 11.96A.060, and as authorized by law.

13 (2) "Matter" includes any issue, question, or dispute involving:

14 (a) The determination of any class of creditors, devisees,
15 legatees, heirs, next of kin, or other persons interested in an
16 estate, trust, nonprobate asset, or with respect to any other asset
17 or property interest passing at death;

18 (b) The direction of a personal representative or trustee to do
19 or to abstain from doing any act in a fiduciary capacity;

20 (c) The determination of any question arising in the
21 administration of an estate or trust, or with respect to any
22 nonprobate asset, or with respect to any other asset or property
23 interest passing at death, that may include, without limitation,
24 questions relating to: (i) The construction of wills, trusts,
25 community property agreements, and other writings; (ii) a change of
26 personal representative or trustee; (iii) a change of the situs of a
27 trust; (iv) an accounting from a personal representative or trustee;
28 (v) the determination of fees for a personal representative or
29 trustee; or (vi) the powers and duties of a statutory trust
30 (~~advisor~~) director or directed trustee of a directed trust under
31 chapter (~~11.98A~~) 11.98B RCW;

32 (d) The grant to a personal representative or trustee of any
33 necessary or desirable power not otherwise granted in the governing
34 instrument or given by law;

35 (e) An action or proceeding under chapter 11.84 RCW;

36 (f) The amendment, reformation, or conformation of a will or a
37 trust instrument to comply with statutes and regulations of the
38 United States internal revenue service in order to achieve
39 qualification for deductions, elections, and other tax requirements,

1 including the qualification of any gift thereunder for the benefit of
2 a surviving spouse who is not a citizen of the United States for the
3 estate tax marital deduction permitted by federal law, including the
4 addition of mandatory governing instrument requirements for a
5 qualified domestic trust under section 2056A of the internal revenue
6 code, the qualification of any gift thereunder as a qualified
7 conservation easement as permitted by federal law, or the
8 qualification of any gift for the charitable estate tax deduction
9 permitted by federal law, including the addition of mandatory
10 governing instrument requirements for a charitable remainder trust;

11 (g) With respect to any nonprobate asset, or with respect to any
12 other asset or property interest passing at death, including joint
13 tenancy property, property subject to a community property agreement,
14 or assets subject to a pay on death or transfer on death designation:

15 (i) The ascertaining of any class of creditors or others for
16 purposes of chapter 11.18 or 11.42 RCW;

17 (ii) The ordering of a qualified person, the notice agent, or
18 resident agent, as those terms are defined in chapter 11.42 RCW, or
19 any combination of them, to do or abstain from doing any particular
20 act with respect to a nonprobate asset;

21 (iii) The ordering of a custodian of any of the decedent's
22 records relating to a nonprobate asset to do or abstain from doing
23 any particular act with respect to those records;

24 (iv) The determination of any question arising in the
25 administration under chapter 11.18 or 11.42 RCW of a nonprobate
26 asset;

27 (v) The determination of any questions relating to the abatement,
28 rights of creditors, or other matter relating to the administration,
29 settlement, or final disposition of a nonprobate asset under this
30 title;

31 (vi) The resolution of any matter referencing this chapter,
32 including a determination of any questions relating to the ownership
33 or distribution of an individual retirement account on the death of
34 the spouse of the account holder as contemplated by RCW 6.15.020(6);

35 (vii) The resolution of any other matter that could affect the
36 nonprobate asset; ~~((and))~~

37 (h) With respect to any custodianship under a uniform transfers
38 to minors act, the determination of any issues subject to court
39 determination under chapter 11.114 RCW; and

1 (i) The reformation of a will or trust to correct a mistake under
2 RCW 11.96A.125.

3 (3) "Nonprobate assets" has the meaning given in RCW 11.02.005.

4 (4) "Notice agent" has the meanings given in RCW 11.42.010.

5 (5) "Party" or "parties" means ~~((each of the following persons~~
6 ~~who has an interest in the subject of the particular proceeding and~~
7 ~~whose name and address are known to, or are reasonably ascertainable~~
8 ~~by, the petitioner;~~

9 ~~(a) The trustor if living;~~

10 ~~(b) The trustee;~~

11 ~~(c) The personal representative;~~

12 ~~(d) An heir;~~

13 ~~(e) A beneficiary, including devisees, legatees, and trust~~
14 ~~beneficiaries;~~

15 ~~(f) The surviving spouse or surviving domestic partner of a~~
16 ~~decedent with respect to his or her interest in the decedent's~~
17 ~~property;~~

18 ~~(g) A guardian ad litem;~~

19 ~~(h) A creditor;~~

20 ~~(i) Any other person who has an interest in the subject of the~~
21 ~~particular proceeding;~~

22 ~~(j) The attorney general if required under RCW 11.110.120;~~

23 ~~(k) Any duly appointed and acting legal representative of a party~~
24 ~~such as a guardian, special representative, or attorney-in-fact;~~

25 ~~(l) Where applicable, the virtual representative of any person~~
26 ~~described in this subsection the giving of notice to whom would meet~~
27 ~~notice requirements as provided in RCW 11.96A.120;~~

28 ~~(m) Any notice agent, resident agent, or a qualified person, as~~
29 ~~those terms are defined in chapter 11.42 RCW;~~

30 ~~(n) The owner or the personal representative of the estate of the~~
31 ~~deceased owner of the nonprobate asset that is the subject of the~~
32 ~~particular proceeding, if the subject of the particular proceeding~~
33 ~~relates to the beneficiary's liability to a decedent's estate or~~
34 ~~creditors under RCW 11.18.200; and~~

35 ~~(o) A statutory trust advisor or directed trustee of a directed~~
36 ~~trust under chapter 11.98A RCW)) any person who has a legal or~~
37 ~~equitable interest in, or who holds a power or a claim with respect~~
38 ~~to, the subject of a matter. Each of the terms "party" or "parties"~~
39 ~~must be construed liberally in its context to fulfill the purposes of~~
40 ~~the procedural rules contained in this chapter as supplemented by the~~

1 court rules and to promote justice, without creating new substantive
2 rights that do not otherwise exist under the laws of this state or
3 principles of equity, and may include without limitation the
4 following:

5 (a) With respect to any property held subject to a revocable
6 trust:

7 (i) Each trustee of the property subject to the trust; and

8 (ii) Each trustor who transferred the property;

9 (b) With respect to any property held subject to an irrevocable
10 trust:

11 (i) Each trustee of the trust holding the property;

12 (ii) Each qualified beneficiary, as defined in RCW 11.98.002, of
13 the property subject to the trust and any other beneficiary whose
14 interest is protected under the constitutional principles of due
15 process; and

16 (iii) Each holder of a power relating to the property;

17 (c) With respect to any testate property:

18 (i) Each personal representative appointed to execute the will
19 governing that property;

20 (ii) Each devisee or legatee of that testate property;

21 (iii) Each holder of a power relating to the testate property
22 following the testator's death; and

23 (iv) Each creditor whose claim has been established by allowance
24 or judgment;

25 (d) With respect to any intestate property:

26 (i) Each personal representative appointed to administer that
27 property;

28 (ii) Each heir of the decedent who owned that property;

29 (iii) Each holder of a power relating to the intestate property
30 following the owner's death; and

31 (iv) Each creditor whose claim has been established by allowance
32 or judgment;

33 (e) With respect to any nonprobate asset, or with respect to any
34 other asset or property interest passing at death, including joint
35 tenancy property, property subject to a community property agreement,
36 or assets subject to a pay on death or transfer on death designation:

37 (i) Each custodian of the property;

38 (ii) Each transferee and beneficiary of the property; and

39 (iii) Each qualified person, the notice agent, or resident agent,
40 as those terms are defined in chapter 11.42 RCW;

1 (f) With respect to any custodial property subject to a uniform
2 transfers to minors act:

3 (i) Each custodian of the custodial property;

4 (ii) The minor, as defined in RCW 11.114.010, for whose benefit
5 the custodian holds the custodial property; and

6 (iii) Each other person who holds a power under chapter 11.114
7 RCW to act on behalf of the minor;

8 (g) With respect to any community property, each spouse;

9 (h) With respect to a matter relating to the powers and duties of
10 a trust director or a directed trustee, or both:

11 (i) Each trust director with an interest in the matter;

12 (ii) Each directed trustee;

13 (iii) Each beneficiary, holder of a power, or other person whose
14 interest or power is affected by the matter and is protected under
15 the constitutional principles of due process;

16 (i) Each creditor whose claim has been allowed but has not been
17 paid;

18 (j) The attorney general to the extent that the attorney general
19 is a necessary and proper party under RCW 11.110.120 and
20 corresponding common law;

21 (k) Each person who claims a legal right, title, or interest in
22 property being subjected to probate or trust administration,
23 nonprobate assets, other property passing at death, or custodial
24 property, including without limitation the resolution of rights and
25 duties under RCW 11.18.200 and questions relating to legal ownership
26 or abatement; and

27 (l) When necessary, a party's representative or representatives,
28 which may include without limitation guardians; custodians; guardians
29 ad litem; special representatives; virtual representatives; attorneys
30 in fact; fiduciaries; and notice agents, resident agents, and
31 qualified persons, as those terms are defined in chapter 11.42 RCW.

32 (6) "Persons interested in the estate (~~or trust~~" means the
33 trustor, if living, all persons beneficially interested in the estate
34 or trust, persons holding powers over the trust or estate assets, the
35 attorney general in the case of any charitable trust where the
36 attorney general would be a necessary party to judicial proceedings
37 concerning the trust, and any personal representative or trustee of
38 the estate or trust)), trust, nonprobate asset, other property
39 passing at death, or custodial property" means all persons legally or
40 beneficially interested in the estate, trust, nonprobate asset, other

1 property passing at death, or custodial property; all persons holding
2 powers with respect to the trust, estate, nonprobate asset, other
3 property passing at death, or custodial property; the attorney
4 general in the case of any charitable trust where the attorney
5 general would be a necessary party to judicial proceedings concerning
6 the trust; all fiduciaries of the estate, trust, nonprobate asset, or
7 other property passing at death; and all custodians of custodial
8 property.

9 (~~7~~) (~~"Representative" and other similar terms refer to a person~~
10 ~~who virtually represents another under RCW 11.96A.120.~~

11 (~~8~~) "Trustee" means any acting and qualified trustee of the
12 trust.

13 (8) "Virtual representative" and other similar terms refer to a
14 person who virtually represents another under RCW 11.96A.120 or other
15 applicable law.

16 **Sec. 4019.** RCW 11.96A.110 and 2011 c 327 s 8 are each amended to
17 read as follows:

18 (1) Subject to RCW 11.96A.160, in all judicial proceedings under
19 this title that require notice, the notice must be personally served
20 on or mailed to all parties or the parties' legal or virtual
21 representatives and to any other persons to whom notice may be
22 required under applicable law at least twenty days before the hearing
23 on the petition unless a different period is provided by statute or
24 ordered by the court. The date of service shall be determined under
25 the rules of civil procedure. Notwithstanding the foregoing, notice
26 that is provided in an electronic transmission and electronically
27 transmitted complies with this section if the party receiving notice
28 has previously consented in a record delivered to the party giving
29 notice to receiving notice by electronic transmission. Consent to
30 receive notice by electronic transmission may be revoked at any time
31 by a record delivered to the party giving notice. Consent is deemed
32 revoked if the party giving notice is unable to electronically
33 transmit two consecutive notices given in accordance with the
34 consent.

35 (2) Proof of the service, mailing, or electronic delivery
36 required in this section must be made by affidavit or declaration
37 filed at or before the hearing.

1 (3) For the purposes of this title, the terms "electronic
2 transmission" and "electronically transmitted" have the same meaning
3 as set forth in RCW 23B.01.400.

4 **Sec. 4020.** RCW 11.96A.220 and 1999 c 42 s 402 are each amended
5 to read as follows:

6 RCW 11.96A.210 through 11.96A.250 shall be applicable to the
7 resolution of any matter, as defined by RCW 11.96A.030, other than
8 matters subject to chapter 11.88 or 11.92 RCW, or a trust for a minor
9 or other incapacitated person created at its inception by the
10 judgment or decree of a court unless the judgment or decree provides
11 that RCW 11.96A.210 through 11.96A.250 shall be applicable. If all
12 parties agree to a resolution of any such matter, then the agreement
13 shall be evidenced by a written agreement signed by all parties.
14 Subject to the provisions of RCW 11.96A.240, the written agreement
15 shall be binding and conclusive on all persons interested in the
16 estate (~~(or)~~), trust, nonprobate asset, other property passing at
17 death, or custodial property. The agreement shall identify the
18 subject matter of the dispute and the parties. If the agreement or a
19 memorandum of the agreement is to be filed with the court under RCW
20 11.96A.230, the agreement may, but need not, include provisions
21 specifically addressing jurisdiction, governing law, the waiver of
22 notice of the filing as provided in RCW 11.96A.230, and the discharge
23 of any special representative who has acted with respect to the
24 agreement.

25 If a party who virtually represents another under RCW 11.96A.120
26 signs the agreement, then the party's signature constitutes the
27 signature of all persons whom the party virtually represents, and all
28 the virtually represented persons shall be bound by the agreement.

29 **Sec. 4021.** RCW 11.96A.220 and 2020 c 312 s 718 are each amended
30 to read as follows:

31 RCW 11.96A.210 through 11.96A.250 shall be applicable to the
32 resolution of any matter, as defined by RCW 11.96A.030, other than
33 matters subject to chapter 11.130 RCW, or a trust for a minor or
34 other incapacitated person created at its inception by the judgment
35 or decree of a court unless the judgment or decree provides that RCW
36 11.96A.210 through 11.96A.250 shall be applicable. If all parties
37 agree to a resolution of any such matter, then the agreement shall be
38 evidenced by a written agreement signed by all parties. Subject to

1 the provisions of RCW 11.96A.240, the written agreement shall be
2 binding and conclusive on all persons interested in the estate
3 ((~~or~~)), trust, nonprobate asset, other property passing at death, or
4 custodial property. The agreement shall identify the subject matter
5 of the dispute and the parties. If the agreement or a memorandum of
6 the agreement is to be filed with the court under RCW 11.96A.230, the
7 agreement may, but need not, include provisions specifically
8 addressing jurisdiction, governing law, the waiver of notice of the
9 filing as provided in RCW 11.96A.230, and the discharge of any
10 special representative who has acted with respect to the agreement.

11 If a party who virtually represents another under RCW 11.96A.120
12 signs the agreement, then the party's signature constitutes the
13 signature of all persons whom the party virtually represents, and all
14 the virtually represented persons shall be bound by the agreement.

15 **Sec. 4022.** RCW 11.96A.230 and 2001 c 14 s 2 are each amended to
16 read as follows:

17 (1) Any party, or a party's legal representative, may file the
18 written agreement or a memorandum summarizing the written agreement
19 with the court having jurisdiction over the estate or trust. The
20 agreement or a memorandum of its terms may be filed within thirty
21 days of the agreement's execution by all parties only with the
22 written consent of the special representative. The agreement or a
23 memorandum of its terms may be filed after a special representative
24 has commenced a proceeding under RCW 11.96A.240 only after the court
25 has determined that the special representative has adequately
26 represented and protected the parties represented. Failure to
27 complete any action authorized or required under this subsection does
28 not cause the written agreement to be ineffective and the agreement
29 is nonetheless binding and conclusive on all persons interested in
30 the estate or trust.

31 (2) On filing the agreement or memorandum, the agreement will be
32 deemed approved by the court and is equivalent to a final court order
33 binding on all persons interested in the estate ((~~or~~)), trust,
34 nonprobate asset, other property passing at death, or custodial
35 property.

36 **Sec. 4023.** RCW 11.98.900 and 1985 c 30 s 60 are each amended to
37 read as follows:

1 (1) The provisions of RCW 11.98.130 through 11.98.160 are
2 applicable to any instrument purporting to create a trust regardless
3 of the date such instrument bears, unless it has been previously
4 adjudicated in the courts of this state.

5 (2) To the extent that this chapter is in conflict with RCW
6 11.68.090, RCW 11.68.090 prevails.

7 **Sec. 4024.** RCW 11.100.050 and 1985 c 30 s 72 are each amended to
8 read as follows:

9 (1) The provisions of this chapter govern fiduciaries acting
10 under wills, agreements, court orders, and other instruments
11 effective before or after January 1, 1985.

12 (2) To the extent that this chapter is in conflict with RCW
13 11.68.090, RCW 11.68.090 prevails.

14 **Sec. 4025.** RCW 11.104A.900 and 2002 c 345 s 602 are each amended
15 to read as follows:

16 (1) In applying and construing chapter 345, Laws of 2002,
17 consideration must be given to the need to promote uniformity of the
18 law with respect to its subject matter among states that enact
19 similar laws.

20 (2) To the extent that this chapter is in conflict with RCW
21 11.68.090, RCW 11.68.090 prevails.

22 **Sec. 4026.** RCW 11.114.020 and 2006 c 204 s 2 are each amended to
23 read as follows:

24 (1) This chapter applies to a transfer that refers to this
25 chapter in the designation under RCW 11.114.090(1) by which the
26 transfer is made if at the time of the transfer, the transferor, the
27 minor, or the custodian is a resident of this state or the custodial
28 property is located in this state. The custodianship so created
29 remains subject to this chapter despite a subsequent change in
30 residence of a transferor, the minor, or the custodian, or the
31 removal of custodial property from this state.

32 (2) A person designated as custodian under this chapter is
33 subject to personal jurisdiction in this state with respect to any
34 matter relating to the custodianship.

35 (3) A transfer that purports to be made and which is valid under
36 the uniform transfers to minors act, the uniform gifts to minors act,
37 or a substantially similar act of another state is governed by the

1 law of the designated state and may be executed and is enforceable in
2 this state if at the time of the transfer, the transferor, the minor,
3 or the custodian is a resident of the designated state or the
4 custodial property is located in the designated state.

5 (4) A matter, whether at law or in equity, involving an account
6 established under this chapter (~~subject to court determination is~~
7 ~~governed by the procedures provided in RCW 11.96A.080 through~~
8 ~~11.96A.200. However, no guardian ad litem is required for the minor,~~
9 ~~except under RCW 11.114.190(1), in the case of a petition by an~~
10 ~~unrepresented minor under the age of eighteen years)) shall be
11 addressed, resolved, and settled under the procedures provided under
12 chapter 11.96A RCW.~~

13 NEW SECTION. Sec. 4027. (1) Sections 4003 through 4017, 4023,
14 and 4024 of this act apply to all probate estates, regardless of
15 whether the probate action commenced before or after the effective
16 date of this section.

17 (2) Section 4026 of this act applies to all accounts established
18 under chapter 11.114 RCW, regardless of whether the account was
19 established before or after the effective date of this section.

20 NEW SECTION. Sec. 4028. Section 4020 of this act expires
21 January 1, 2022.

22 NEW SECTION. Sec. 4029. Section 4021 of this act takes effect
23 January 1, 2022.

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